

APPENDIX TAB I (Part 1)

Hearing Transcript

AMERICAN ARBITRATION ASSOCIATION

DALLAS, TEXAS

TRICON ENERGY, LTD.,)	
)	
Claimant,)	
)	CASE NO.
- against -)	70 198Y 00168 09
)	
VINMAR INTERNATIONAL, LTD.,)	
)	
Respondent.)	

TRANSCRIPT OF PROCEEDINGS

BE IT KNOWN THAT the above-entitled matter came on for arbitration at 8:50 a.m. on the 20th day of September, 2010, at the Houston Club, 811 Rusk, 10th Floor, Travis Room, Houston, Texas, before the Honorable Levi Benton, Presiding, the Honorable Sharolyn Wood and the Honorable Mark Davidson, Arbitrators, and the following proceedings were had:

ARBITRATION HEARING - SEPTEMBER 20, 2010

2	4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 THE PANEL OF ARBITRATORS:</p> <p>4 Honorable Levi Benton, Chair</p> <p>5 Honorable Sharolyn Wood</p> <p>6 Honorable Mark Davidson</p> <p>7</p> <p>8 FOR THE CLAIMANT, TRICON ENERGY, LTD.:</p> <p>9 Mr. George R. Diaz-Arrastia</p> <p>10 Ms. Tracy D. Larson</p> <p>11 SCHIRMEISTER, DIAZ-ARRASTIA & BREM, LLP</p> <p>12 700 Milan, 10th Floor</p> <p>13 Houston, Texas 77002</p> <p>14 Tel: (713) 221-2500</p> <p>15 FAX: (713) 228-3510</p> <p>16 gdarrastia@sdblawn.com</p> <p>17 tlarsen@sdblawn.com</p> <p>18</p> <p>19 FOR THE RESPONDENT, VINMAR INTERNATIONAL, LTD.:</p> <p>20 Mr. Stephen H. Lee</p> <p>21 Mr. R. Blake Runions</p> <p>22 PORTER & HEDGES, LLP</p> <p>23 1000 Main Street, 36th Floor</p> <p>24 Houston, Texas 77002-6336</p> <p>25 Tel: (713) 226-6000</p> <p>FAX: (713) 226-6286</p> <p>slee@porterhedges.com</p> <p>brunions@porterhedges.com</p> <p>ALSO PRESENT:</p> <p>Mr. Mark S. Antonovich</p> <p>Ms. Dana Hodges</p> <p>Mr. Brad Lockwood</p> <p>Ms. Myra Mendez</p> <p>Ms. Petrice Podlesny</p>	<p>1 JOINT EXHIBITS</p> <p>2 NUMBER AND DESCRIPTION PAGE</p> <p>3 Exhibit 1 --</p> <p>4 12-11-07 Contract between Tricon</p> <p>5 Energy and KP Chemical Corp.</p> <p>6 TRI 286-290</p> <p>7</p> <p>8 Exhibit 2 --</p> <p>9 7-22-08 Fax to Rick Wilson attaching</p> <p>10 first MOAB Confirmation</p> <p>11 VIN 21-23, Exhibit 2</p> <p>12</p> <p>13 Exhibit 3 --</p> <p>14 7-22-08 Fax to Rick Wilson attaching</p> <p>15 second MOAB Confirmation</p> <p>16 VIN 19-20, Exhibit 3</p> <p>17</p> <p>18 Exhibit 4 --</p> <p>19 7-23-08 Fax to Rick Wilson attaching</p> <p>20 third MOAB Confirmation</p> <p>21 VIN 17-18, Exhibit 4</p> <p>22</p> <p>23 Exhibit 5 --</p> <p>24 7-23-08 Email string between Brad</p> <p>25 Lockwood and Rick Wilson, cc'ing</p> <p>others and attaching letter from</p> <p>Tricon Energy</p> <p>TRI 6-10, Exhibit 15</p> <p>Exhibit 6 --</p> <p>7-24-08 Email from Rick Wilson to</p> <p>Laurentiu Pascu, cc'ing Brad Lockwood,</p> <p>attaching letter from Tricon Energy</p> <p>VIN 85-89, Exhibit 29</p> <p>Exhibit 7 --</p> <p>7-22-08 Vinmar's SAP Data</p> <p>VIN 91-A-VIN 91-B, Exhibit 32-33</p> <p>Exhibit 8 --</p> <p>7-25-08 Email string between Eduard</p> <p>Anaya and Rick Wilson, cc'ing others</p> <p>VIN 90, Exhibit 31</p>
3	5
<p>1 INDEX</p> <p>2 PAGE</p> <p>3</p> <p>4 Appearances..... 2</p> <p>5</p> <p>6 Opening Remarks on Behalf of The Respondent..... 20</p> <p>7</p> <p>8 Opening Remarks on Behalf of The Claimant..... 26</p> <p>9</p> <p>10 Opening Remarks on Behalf of The Respondent..... 49</p> <p>11</p> <p>12 PRESENTATION ON BEHALF OF THE CLAIMANT</p> <p>13</p> <p>14 BRAD JASON LOCKWOOD</p> <p>15 Direct Examination by Mr. Diaz-Arrastia..... 54</p> <p>16 Cross-Examination by Mr. Lee..... 106</p> <p>17 Redirect Examination by Mr. Diaz-Arrastia... 222</p> <p>18 EDWARD LEYMAN (VIA VIDEOTAPE PLAYBACK)..... 238</p> <p>19 VUK RAJEVAC</p> <p>20 Direct Examination by Mr. Diaz-Arrastia..... 288</p> <p>21</p> <p>22 Reporter's Certificate Page..... 310</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 JOINT EXHIBITS (Continued)</p> <p>2 NUMBER AND DESCRIPTION PAGE</p> <p>3 Exhibit 9 --</p> <p>4 7-29-08 Email from Laurentiu Pascu to</p> <p>5 Rick Wilson</p> <p>6 VIN 98-99, Exhibit 36</p> <p>7</p> <p>8 Exhibit 10 --</p> <p>9 7-22-08 - 7-31-08 Instant message</p> <p>10 communications between Brad Lockwood</p> <p>11 and Ed Leyman</p> <p>12 MOAB 4-14, Exhibit 1</p> <p>13</p> <p>14 Exhibit 11 --</p> <p>15 7-22-08 - 7-31-08 Instant message</p> <p>16 communications between Ed Leyman and</p> <p>17 Rick Wilson</p> <p>18 MOAB 15-16, Exhibit 6, 43</p> <p>19</p> <p>20 Exhibit 12 --</p> <p>21 7-31-08 Instant message communications</p> <p>22 between Brad Lockwood and Rick Wilson</p> <p>23 VIN 24, Exhibit 42</p> <p>24</p> <p>25 Exhibit 13 --</p> <p>7-31-08 Email from Laurentiu Pascu to</p> <p>Rick Wilson, forwarding edits to</p> <p>letter from Tricon Energy</p> <p>VIN 3-8, Exhibit 35</p> <p>Exhibit 14 --</p> <p>7-31-08 Email from Laurentiu Pascu to</p> <p>Rick Wilson, forwarding email from Vuk</p> <p>Rajevac</p> <p>VIN 9-10, Exhibit 37</p> <p>Exhibit 15 --</p> <p>7-31-08 Email string between Vuk</p> <p>Rajevac, Rick Wilson and Laurentiu</p> <p>Pascu, cc'ing others</p> <p>TRI 17-18, Exhibit 17</p> <p>Exhibit 16 --</p> <p>7-31-08 E-mail from Rick Wilson to</p> <p>Devang Mehta</p> <p>VIN 65, Exhibit 44</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

6			8		
1	JOINT EXHIBITS (Continued)		1	TRICON EXHIBITS (Continued)	
2	NUMBER AND DESCRIPTION	PAGE	2	NUMBER AND DESCRIPTION	PAGE
3	Exhibit 17..... --		3	Exhibit 4..... --	
4	8-6-08 Email string between Vuk		4	7-20-08 Contract between Tricon Energy	
5	Rajevac, Rick Wilson and Laurentiu		5	and KP Chemical Corp., attaching	
6	Pascu, cc'ing others		6	average MX price for September	
7	VIN 81-82		7	TRI 36-40	
8	Exhibit 18..... --		8	Exhibit 5..... --	
9	8-6-08 Email from Ed Leyman to Brad		9	7-22-08 - 8-6-08 Instant message	
10	Lockwood, forwarding email from Rick		10	communications between Brad Lockwood	
11	Wilson		11	and Ed Leyman	
12	TRI 21, Exhibit 9		12	TRI 43-51, Exhibit 5, 8	
13	Exhibit 19..... --		13	Exhibit 6..... --	
14	8-6-08 Email from Ed Leyman to Brad		14	7-22-08 - 7-23-08 Instant message	
15	Lockwood, forwarding email from Rick		15	communications between Brad Lockwood	
16	Wilson		16	and Ed Leyman	
17	MOAB 62		17	TRI 30-33	
18	Exhibit 20..... --		18	Exhibit 7..... --	
19	8-8-08 Email from Ed Leyman to Brad		19	7-23-08 Fax to Rick Wilson attaching	
20	Lockwood, forwarding email from Rick		20	letter from Tricon Energy	
21	Wilson		21	VIN 12-16	
22	MOAB 64		22	Exhibit 8..... --	
23	Exhibit 21..... --		23	7-23-08 Email string between Jason	
24	8-9-08 Email string between Brad		24	Luoh and Rick Wilson, cc'ing others	
25	Lockwood, Mark Antonvich and Vuk		25	VIN 138-139, Exhibit 40	
	Rajevac, cc'ing others			Exhibit 9..... --	
	VIN 40-42			7-23-08 Email string between Jason	
	Exhibit 22..... --			Luoh and Rick Wilson, cc'ing others	
	8-11-08 Email from Brad Lockwood to			VIN 140	
	individuals at KP Chemical Corp.			Exhibit 10..... --	
	TRI 291			7-24-08 Vinmar International Purchase	
	Exhibit 23..... --			Order	
	8-12-08 Email string between Brad			VIN 95-97, Exhibit 34	
	Lockwood and Mark Antonvich, cc'ing			Exhibit 11..... --	
	others			7-24-08 Vinmar International SAP Data	
	VIN 49-50			VIN 91a-91b, Exhibit 32-33	
				Exhibit 12..... --	
				7-24-08 Vinmar International SAP Data	
				VIN 91, Exhibit 30	
7			9		
1	JOINT EXHIBITS (Continued)		1	TRICON EXHIBITS (Continued)	
2	NUMBER AND DESCRIPTION	PAGE	2	NUMBER AND DESCRIPTION	PAGE
3	Exhibit 24..... --		3	Exhibit 13..... --	
4	9-22-08 Contract between Tricon Energy		4	7-29-08 Email string between Vuk	
5	and J&J Chemtrading Co.		5	Rajevac and Laurentiu Pascu, attaching	
6	TRI 98-100		6	edits to letter from Tricon Energy	
7	Exhibit 25..... --		7	VIN 27-31	
8	10-2-08 E-mail string between Gigi Ren		8	Exhibit 14..... --	
9	and W.S. Shim, cc'ing others		9	7-29-08 Email string between Rick	
10	TRI 2544-2548		10	Wilson and Laurentiu Pascu	
11	Exhibit 26..... --		11	VIN 116-117, Exhibit 41	
12	10-6-08 Email from Brad Lockwood to		12	Exhibit 15..... --	
13	Rick Wilson and Mark Antonvich,		13	8-4-08 Email string between Rick	
14	attaching invoice		14	Wilson and Devang Mehta	
15	TRI 41-42		15	VIN 58	
16	Exhibit 27..... --		16	Exhibit 16..... --	
17	10-20-08 Commercial Invoice from		17	8-6-08 Email string between Brad	
18	Tricon to Lotte Bussan for sale of MX		18	Lockwood, Ed Leyman and Rick Wilson,	
19	TRI 316-318		19	cc'ing others	
20	Exhibit 28..... --		20	MOAB 25-26	
21	11-4-08 Job Transaction Summary Report		21	Exhibit 17..... --	
22	of Tricon Energy purchase of MX		22	8-6-08 Email from Rick Wilson to	
23	TRI 319-322		23	Hermant Goradia, cc'ing others	
24	TRICON EXHIBITS		24	VIN 59, Exhibit 45	
25	NUMBER AND DESCRIPTION	PAGE	25	Exhibit 18..... --	
	Exhibit 1..... --			8-7-08 Email from Rick Wilson to Mark	
	10-23-07 MOAB Confirmation			Antonvich, forwarding email string	
	TRI 259			between Rick Wilson, Vuk Rajevac and	
	Exhibit 2..... --			Laurentiu Pascu	
	10-23-07 MOAB Confirmation			VIN 35-37, Exhibit 46	
	TRI 260			Exhibit 19..... --	
	Exhibit 3..... --			8-10-08 Email string between TS Kim	
	10-29-07 MOAB Confirmation			and Rick Wilson, cc'ing others	
	TRI 257			VIN 156-158	
				Exhibit 20..... --	
				9-3-08 Email string among Sa Uk Chang,	
				W.S. Shim and Gigi Ren, cc'ing others	
				TRI 2555-2558	

ARBITRATION HEARING - SEPTEMBER 20, 2010

10			12		
1	TRICON EXHIBITS (Continued)		1	TRICON EXHIBITS (Continued)	
2	NUMBER AND DESCRIPTION	PAGE	2	NUMBER AND DESCRIPTION	PAGE
3	Exhibit 21..... --		3	Exhibit 39..... --	
4	9-3-08 Email from Brad Lockwood to		4	9-13-10 Amended Expert Report of Chuck	
5	Sa Uk Chang		5	Matthews	
6	TRI 2559		6	N/A	
7	Exhibit 22..... --		7	Exhibit 40..... --	
8	9-4-08 Email from Sa Uk Chang to Brad		8	C.V. of Chuck Matthews	
9	Lockwood, forwarding email from		9	N/A	
10	MJ Hwang		10	Exhibit 41..... 538	
11	TRI 2553-2554		11	Handwritten calculations made during	
12	Exhibit 23..... --		12	the arbitration	
13	10-2-08 Email string between WS Shim		13	VINMAR EXHIBITS	
14	and Gigi Ren, cc'ing others		14	NUMBER AND DESCRIPTION	PAGE
15	TRI 2618-2628		15	Exhibit 1..... --	
16	Exhibit 24..... --		16	7-22-08 MOAB's Handwritten Note	
17	10-20-08 Invoices, inspection reports,		17	MOAB 1, Depo Ex 7	
18	bills of lading, and certifications		18	Exhibit 2..... --	
19	reflecting purchase of MX by Tricon		19	7-22-08 Email from R. Wilson to	
20	Energy		20	N. Smith regarding MX	
21	TRI 303-315		21	VIN 118-VIN 119	
22	Exhibit 25..... --		22	Exhibit 3..... --	
23	10-20-08 Bill of lading and		23	7-22-08 Email from B. Lockwood to	
24	certificates of inspection reflecting		24	H. Chapa regarding Vinmar/Rick Wilson	
25	transfer of MX		25	TRI 1-TRI 2, Depo Ex 13	
	TRI 2557-2584			Exhibit 4..... --	
	Exhibit 26..... --			7-24-08 Vinmar's SAP Data	
	12-1-08 MX price quotations			VIN 91, VIN 93-VIN 94	
	TRI 35			Exhibit 5..... --	
	Exhibit 27..... --			7-29-08 Email from R. Wilson to	
	2-10-09 MOAB Confirmation			L. Paseu with V. Rajevac contact	
	TRI 209			information	
	Exhibit 28..... --			VIN 116-VIN 117	
	2-20-09 MOAB Confirmation				
	TRI 207				
	Exhibit 29..... --				
	3-9-09 Letter from George				
	Diaz-Arrostia to Stephen Lee				
	N/A				
11			13		
1	TRICON EXHIBITS (Continued)		1	VINMAR EXHIBITS (Continued)	
2	NUMBER AND DESCRIPTION	PAGE	2	NUMBER AND DESCRIPTION	PAGE
3	Exhibit 30..... --		3	Exhibit 6..... --	
4	11-11-09 MOAB Confirmation		4	7-31-08 Email from D. Mehta to	
5	TRI 186		5	E. Leyman regarding US origin MX	
6	Exhibit 31..... --		6	MOAB 20-MOAB 21	
7	11-25-09 MOAB Confirmation		7	Exhibit 7..... --	
8	TRI 179		8	8-6-08 Email from R. Wilson to	
9	Exhibit 32..... --		9	H. Goradia regarding Tricon	
10	12-16-09 Email from Ben Morse to Brad		10	Communication; Draft to discuss	
11	Lockwood, attaching daily MX pricing		11	VIN 59	
12	TRI 58-61		12	Exhibit 8..... --	
13	Exhibit 33..... --		13	8-6-08 Email from R. Wilson to	
14	6-15-10 Email string between Benjamin		14	B. Lockwood re Vinmar MX Purchase Sale	
15	Morse and Chuck Matthews		15	VIN 180-VIN 181	
16	N/A		16	Exhibit 9..... --	
17	Exhibit 34..... --		17	8/25/08 Email from B. Lockwood to	
18	6-21-10 Vinmar's Responses to Tricon's		18	B. Lockwood regarding Yahoo	
19	Fourth Requests for Production		19	correspondence between E. Leyman and	
20	N/A		20	B. Lockwood	
21	Exhibit 35..... --		21	TRI 43-TRI 51	
22	6-21-10 Vinmar's Responses to Tricon's		22	Exhibit 10..... --	
23	Fourth Interrogatory Requests		23	8-8-08 Email from B. Lockwood to	
24	N/A		24	M. Antonvich regarding Vinmar/Tricon	
25	Exhibit 36..... --		25	MX Contract	
	7-12-10 Expert Report of Steve Simpson			TRI 22-TRI 23	
	N/A			Exhibit 11..... --	
	Exhibit 37..... --			8-11-08 Email from B. Lockwood to	
	1-22-09 - 8-16-10 Tricon's Attorneys'			M. Antonvich regarding vessel	
	Fees Invoices			nomination	
	TRI 2791-2859			VIN 43-VIN 48	
	Exhibit 38..... --			Exhibit 12..... --	
	9-13-10 Tricon's August Attorneys'			8-22-08 Email from B. Lockwood to	
	Fees Invoices			M. Antonvich regarding Vessel	
	TRI 2878-2885			Nomination 5000 MT MX under Contract	
				SA1230-0708HOU	
				TRI 27-TRI 29	

4 (Pages 10 to 13)

ARBITRATION HEARING - SEPTEMBER 20, 2010

14	16
<p>1 VINMAR EXHIBITS (Continued)</p> <p>2 NUMBER AND DESCRIPTION PAGE</p> <p>3 Exhibit 13..... --</p> <p>4 7-23-08 - 9-30-08 Tricon redacted</p> <p>5 Inventory Log</p> <p>6 TRI 353-TRI 391</p> <p>7 Exhibit 14..... --</p> <p>8 6-15-10 Letter from T. Larson to</p> <p>9 S. Lee re: Discovery</p> <p>10 N/A</p> <p>11 Exhibit 15..... --</p> <p>12 7-22-08 MOAB Oct. 2, 2008 invoice</p> <p>13 TRI 97</p> <p>14 Exhibit 16..... --</p> <p>15 8-11-08 - 2-4-09 Lockwood/Leyman IMs</p> <p>16 TRI 277-TRI 285</p> <p>17 Exhibit 17..... --</p> <p>18 7-20-08 Tricon/KP Chemical Corp.</p> <p>19 contract</p> <p>20 TRI 299-TRI 302</p> <p>21 Exhibit 18..... --</p> <p>22 9-24-08 Email from J. Lee to</p> <p>23 B. Lockwood, S. Chang re Sales</p> <p>24 confirmation for MX SKT in 2H October</p> <p>25 TRI 780-TRI 784</p> <p>Exhibit 19..... --</p> <p>9-23-08 Email from P. Kyle to G. Ren,</p> <p>V. Rajevac, A. Bansal, B. Lockwood,</p> <p>S. Chang regarding Ship nomination</p> <p>request</p> <p>TRI 2549</p> <p>Exhibit 20..... --</p> <p>10-20-08 Commercial Invoice from J&J</p> <p>Chemtrading to Tricon for 3,200 MT of</p> <p>Mixed Xylene</p> <p>TRI 2199</p>	<p>1 (8:50 a.m.)</p> <p>2 JUDGE BENTON: Let's go ahead and go on</p> <p>3 the record. We're now on the record in the arbitration</p> <p>4 matter of Tricon Energy, Limited, Claimant, versus</p> <p>5 Vinmar International, Limited, Respondent.</p> <p>6 I am Levi Benton, the panel chair, joined,</p> <p>7 of course, this morning by two other arbitrators. To my</p> <p>8 right, Judge Sharolyn Wood, to my left, Judge Mark</p> <p>9 Davidson.</p> <p>10 Before we get into other housekeeping</p> <p>11 matters, Mr. Diaz-Arrastia, you are -- you represent the</p> <p>12 claimant. Why don't you announce yourself on the record</p> <p>13 and tell us who's with you?</p> <p>14 MR. DIAZ-ARRASTIA: Thank you, Judge</p> <p>15 Benton. I am George Diaz-Arrastia. I represent the</p> <p>16 claimant, Tricon Energy, Limited. With me is Tracy</p> <p>17 Larson from my office, Mr. Brad Lockwood, who is the</p> <p>18 representative of Tricon, and Ms. Dana Hodges and</p> <p>19 Ms. Myra Mendez from my office.</p> <p>20 JUDGE BENTON: Okay. Mr. Lee?</p> <p>21 MR. LEE: Yes, Your Honor. And do you</p> <p>22 mind if we -- okay. I want to make sure we do it right.</p> <p>23 Stephen Lee on behalf of Vinmar.</p> <p>24 And I need to go ahead and make sure that</p> <p>25 the record is clear. I think we've objected to</p>
15	17
<p>1 VINMAR EXHIBITS (Continued)</p> <p>2 NUMBER AND DESCRIPTION PAGE</p> <p>3 Exhibit 21..... --</p> <p>4 10-20-08 Commercial Invoice from J&J</p> <p>5 Chemtrading to Tricon for 570.042 MT</p> <p>6 of Mixed Xylene</p> <p>7 TRI 2203</p> <p>8 Exhibit 22..... --</p> <p>9 10-23-08 Commercial Invoice from J&J</p> <p>10 Chemtrading to Tricon for 950.010 MT</p> <p>11 of Mixed Xylene</p> <p>12 TRI 2204</p> <p>13 Exhibit 23..... --</p> <p>14 10-27-08 Email from W. Shim to G. Ren,</p> <p>15 V. Rajevac, C. Trammell, B. Lockwood &</p> <p>16 S. Chang re Vessel nomination SKT MX</p> <p>17 TRI 2585-TRI 2590</p> <p>18 Exhibit 24..... --</p> <p>19 2-22-10 Tricon Energy, Ltd.'s</p> <p>20 Objections and Responses to Vinmar</p> <p>21 International, Ltd.'s First Request</p> <p>22 for Admissions</p> <p>23 N/A</p> <p>24 Exhibit 25..... --</p> <p>25 2-22-10 Tricon Energy, Ltd.'s</p> <p>Objections and Responses to Vinmar</p> <p>International, Ltd.'s First</p> <p>Interrogatory Requests</p> <p>N/A</p> <p>Exhibit 26..... --</p> <p>Blank July 2008 Calendar</p> <p>N/A</p> <p>Exhibit 27..... 214</p> <p>Handwritten calculations made during</p> <p>the arbitration</p> <p>Exhibit 28..... 219</p> <p>Handwritten calculations made during</p> <p>the arbitration</p>	<p>1 arbitration from the very beginning. Our presence here</p> <p>2 is subject to and without waiver of that arbitration</p> <p>3 objection.</p> <p>4 JUDGE BENTON: Right.</p> <p>5 MR. LEE: I would really like to dispense</p> <p>6 with having to object all the way through if I could get</p> <p>7 the panel's acknowledgment that we've at least filed an</p> <p>8 objection and that everybody is aware of that.</p> <p>9 JUDGE BENTON: It is so acknowledged and</p> <p>10 we're going to address that in just a few minutes.</p> <p>11 MR. LEE: Thank you. Stephen Lee. I'm</p> <p>12 lead counsel for Vinmar. Blake Runions from my office</p> <p>13 is an associate, will be helping us. And Mark</p> <p>14 Antonvich, who is the general counsel at Vinmar, is here</p> <p>15 as a representative.</p> <p>16 JUDGE BENTON: Yeah. And I'll -- whatever</p> <p>17 happens following the hearing of your motion to dismiss</p> <p>18 in the event that -- I'm going to say this now because I</p> <p>19 might forget. In the event that we conclude that your</p> <p>20 motion to dismiss is without merit, you have a running</p> <p>21 objection throughout these proceedings so that you need</p> <p>22 not continue to assert it. And you are fine with that.</p> <p>23 Correct, Mr. Diaz-Arrastia?</p> <p>24 MR. DIAZ-ARRASTIA: Yes, Your Honor.</p> <p>25 That's fine.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">18</p> <p>1 JUDGE BENTON: All right. Just kind of --</p> <p>2 I guess I'll call it housekeeping. To give you a sense</p> <p>3 of where we want to go this morning, we do want to first</p> <p>4 hear argument. And if you -- if it's your desire to put</p> <p>5 on evidence, I guess we want to hear that related to the</p> <p>6 motion to dismiss.</p> <p>7 I don't know whether you intend to put on</p> <p>8 any evidence to support your motion to dismiss, but</p> <p>9 whatever time it takes for -- well, let's assume that we</p> <p>10 will --</p> <p>11 MR. DIAZ-ARRASTIA: Your Honor, if I may</p> <p>12 interject, it is our intention to put on evidence to</p> <p>13 address the jurisdiction of this panel. The problem</p> <p>14 that we have, as we have pointed out various times, is</p> <p>15 that in order for us to put on the evidence to address</p> <p>16 jurisdiction really requires putting on all of the</p> <p>17 evidence on the merits of the case excepting the damages</p> <p>18 evidence and that's why we have believed that the</p> <p>19 jurisdictional issue should be carried with the merits</p> <p>20 and decided together.</p> <p>21 JUDGE BENTON: I understand that.</p> <p>22 MR. DIAZ-ARRASTIA: Now, we do have</p> <p>23 argument -- and I can show you some of the documents</p> <p>24 that we think are important and I'm prepared to do that</p> <p>25 this morning.</p>	<p style="text-align: right;">20</p> <p>1 JUDGE BENTON: It's almost 9:00 o'clock.</p> <p>2 We would like to take a restroom break about 10:30</p> <p>3 unless we have taken a break before then. We'll</p> <p>4 likely -- depending on how the day goes, we'll likely</p> <p>5 break for lunch around noon and then we'll just see</p> <p>6 where we are from there.</p> <p>7 Judge Wood, anything you want to add?</p> <p>8 Judge Davidson?</p> <p>9 JUDGE DAVIDSON: Let's go.</p> <p>10 JUDGE BENTON: Okay. Do you want to make</p> <p>11 a brief open relating to your motion to dismiss,</p> <p>12 Mr. Lee, or do you just want to roll your sleeves up and</p> <p>13 get going?</p> <p>14 And, by the way, it's a little warm to me</p> <p>15 in here. You're welcome to remove coats at any time.</p> <p>16 You need not ask our permission.</p> <p>17 OPENING REMARKS ON BEHALF OF THE RESPONDENT</p> <p>18 MR. LEE: Thank you, Your Honor. I</p> <p>19 would -- I think instead of just giving you a brief</p> <p>20 opening, I'm prepared to argue the motion.</p> <p>21 I think the evidence that I need is</p> <p>22 already before the panel. Tricon bases its claim in</p> <p>23 this case -- a breach of contract case against Vinmar</p> <p>24 and their entire case is based on the argument that an</p> <p>25 agreement was formed on July the 22nd, 2008.</p>
<p style="text-align: right;">19</p> <p>1 JUDGE BENTON: I understand your</p> <p>2 perspective. Let me tell you how we're going to</p> <p>3 proceed. We're going to -- inasmuch as it's their</p> <p>4 motion to dismiss, we're going to give Vinmar the</p> <p>5 opportunity to put on their motion to dismiss.</p> <p>6 It is their motion to dismiss. And so to</p> <p>7 the extent they wish to put on evidence in support of</p> <p>8 their motion to dismiss, we'll afford them the</p> <p>9 opportunity to do that. When they rest on their motion</p> <p>10 to dismiss, you in turn will have the right to put on</p> <p>11 evidence of -- or evidence in opposition to their motion</p> <p>12 to dismiss.</p> <p>13 I understand now that it may well be -- or</p> <p>14 we understand now that it may well be that your desire</p> <p>15 is to put on the entire case -- your entire case on the</p> <p>16 merits. We need not answer now as to liability --</p> <p>17 (Brief discussion off the record.)</p> <p>18 JUDGE BENTON: Right. The merits of the</p> <p>19 case less liability.</p> <p>20 On the other hand, at the conclusion of</p> <p>21 the presentation -- or their presentation on their</p> <p>22 motion to dismiss, you might change your mind about</p> <p>23 whether or not you want to put on your entire case. We</p> <p>24 shall see.</p> <p>25 MR. DIAZ-ARRASTIA: Okay.</p>	<p style="text-align: right;">21</p> <p>1 A broker by the name of Ed Leyman -- this</p> <p>2 is sort of an unusual situation in that the parties</p> <p>3 never talked. All of the communications were done</p> <p>4 through a broker, a gentleman by the name of Ed Leyman,</p> <p>5 MOAB Oil. And Mr. Leyman purported to arrange a deal</p> <p>6 between the parties.</p> <p>7 It's our contention that he missed a</p> <p>8 crucial term and that the terms didn't match and there</p> <p>9 was, in fact, no mutual assent. But importantly for the</p> <p>10 motion to dismiss is the fact that Mr. Leyman claimed</p> <p>11 that a contract existed between the parties. He sent</p> <p>12 out a written confirmation of that agreement and Tricon</p> <p>13 bases claim on that document.</p> <p>14 The request for admission responses say</p> <p>15 that the -- they believe that the confirmation is a</p> <p>16 binding contract. Their pleadings, the specification of</p> <p>17 claims that's before the panel says that the</p> <p>18 confirmation is a binding contract.</p> <p>19 The confirmation itself does not contain</p> <p>20 an arbitration agreement and everybody's admitted that.</p> <p>21 There is no arbitration agreement in the four corners of</p> <p>22 the broker confirmation that Tricon bases its entire</p> <p>23 case upon. Texas law is clear. If you claim that a</p> <p>24 contract was formed at the time the contract is formed,</p> <p>25 there -- you can't supplement that document with</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">22</p> <p>1 additional contract claims.</p> <p>2 Tricon's position is we have a</p> <p>3 confirmation but then we sent a sales contract and the</p> <p>4 sales contract contained an arbitration provision and so</p> <p>5 we're going to supplement the confirmation with our</p> <p>6 terms of the sales contract.</p> <p>7 And there's a couple of big problems with</p> <p>8 that. One, 2-207, which is the first argument that</p> <p>9 Tricon put out there, which is the battle that forms UCC</p> <p>10 provision, Texas law, there's a number of cases that we</p> <p>11 cite in our motion to dismiss that say that you cannot</p> <p>12 resort to Section 2-207, the battle forms section if, in</p> <p>13 fact, there is already an agreement.</p> <p>14 And Tricon's case is and claim is that</p> <p>15 there was already an agreement that was documented by</p> <p>16 the broker. They claim that that broker confirmation</p> <p>17 satisfies the statute of fraud. So if they're correct</p> <p>18 and that's what their case is based on, the contract</p> <p>19 claim is the broker confirmation without an arbitration</p> <p>20 provision.</p> <p>21 In addition to that, you cannot read the</p> <p>22 sales contract that Tricon sent in conjunction with the</p> <p>23 broker confirmation because the sales contract itself on</p> <p>24 its face says, "This document cancels and supersedes the</p> <p>25 broker confirmation."</p>	<p style="text-align: right;">24</p> <p>1 fundamental question for the panel and certainly</p> <p>2 something that first must be decided by a Court because</p> <p>3 the case is entirely based on a broker confirmation --</p> <p>4 an agreement on July the 22nd between the parties orally</p> <p>5 that was confirmed by a broker confirmation. That's</p> <p>6 what the case is based upon.</p> <p>7 There's no arbitration provision. And so</p> <p>8 I don't even think they get to the question of, well, do</p> <p>9 you include the sales contract? Do you include other</p> <p>10 terms? Well, that's a matter for a Court to decide.</p> <p>11 We've been very clear about this from the</p> <p>12 beginning, that we objected to arbitration. Texas law</p> <p>13 provide -- and we've been clear about our remedies, too,</p> <p>14 that if they wanted to proceed in arbitration they were</p> <p>15 doing so at the risk of our ability to move to vacate</p> <p>16 the panel's award if it was against us because there was</p> <p>17 never jurisdiction in the first place.</p> <p>18 And so I think that the fundamental</p> <p>19 question here and where we are is Tricon puts the cart</p> <p>20 before the horse. They want to run into arbitration and</p> <p>21 try the whole case and see if they can get the panel to</p> <p>22 give them relief when the question of whether the panel</p> <p>23 has jurisdiction or not has not been decided.</p> <p>24 And so I think, Your Honors, with the</p> <p>25 specification of claims making it clear that their case</p>
<p style="text-align: right;">23</p> <p>1 So if -- you can't read them together.</p> <p>2 They cannot be read as a -- the sales contract as a</p> <p>3 supplement to the confirmation. But the jurisdictional</p> <p>4 problem that we have is Texas case law makes it clear</p> <p>5 that gateway matters such as whether there is an</p> <p>6 arbitration agreement or not is a matter that is</p> <p>7 reserved exclusively for the Courts.</p> <p>8 A Court has to make a decision, Is there a</p> <p>9 contract? And if there is, is there an arbitration</p> <p>10 provision? And those decisions must be made before a</p> <p>11 panel has arb -- has jurisdiction to hear this claim.</p> <p>12 And that's -- it goes back to the fundamental premise of</p> <p>13 arbitration, which is that it's an -- it's a breach of</p> <p>14 contract.</p> <p>15 The parties have to agree to arbitrate and</p> <p>16 you can't force arbitration upon somebody that hasn't</p> <p>17 agreed to that. And so the question under Texas law --</p> <p>18 and we've cited a number of cases that deal with this</p> <p>19 issue, when the question is whether there is an</p> <p>20 agreement in the first place. That question is for the</p> <p>21 Courts to decide.</p> <p>22 And even if there's an agreement, then the</p> <p>23 next question is, what is -- what does the agreement</p> <p>24 include? Does it include an arbitration provision or</p> <p>25 not? And in this case, it's really a fairly -- it's a</p>	<p style="text-align: right;">25</p> <p>1 is based on broker confirmation, all of the testimony</p> <p>2 from their witnesses, their request for admission</p> <p>3 responses, their interrogatory answers all say, "Yes, we</p> <p>4 believe the broker confirmation" -- the one-page broker</p> <p>5 confirmation that they say outlines the terms of the</p> <p>6 deal is a binding contract and there is no arbitration</p> <p>7 agreement in that document.</p> <p>8 And I would just point you to -- it's</p> <p>9 already in the record in their pleadings, but if you</p> <p>10 were to look at Joint Exhibit No. 4 in your binders,</p> <p>11 this is the final confirmation from the broker and we</p> <p>12 can all look at it. There is no arbitration provision</p> <p>13 in that document.</p> <p>14 So we believe that the appropriate remedy</p> <p>15 here is for the panel to dismiss this case until Tricon</p> <p>16 deals with the jurisdictional question. And because the</p> <p>17 Court is going to decide a number of issues that may or</p> <p>18 may not be -- that will impact arbitration one way or</p> <p>19 the other -- either the Court decides there is no</p> <p>20 agreement and there never was an agreement so there's no</p> <p>21 arbitration or the Court may define what the contract is</p> <p>22 and if that contract includes an arbitration provision,</p> <p>23 then we will have an arbitration hearing.</p> <p>24 But what you try in arbitration, how it's</p> <p>25 tried and the scope of that all needs to be decided</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">26</p> <p>1 first by a Court and otherwise I don't see how you can 2 get to a point where you can come to an award that is 3 based on jurisdiction. 4 JUDGE BENTON: Judge Wood, any questions 5 for Mr. Lee? 6 JUDGE WOOD: Not at this time. 7 JUDGE BENTON: Judge Davidson? 8 JUDGE DAVIDSON: Not now. 9 JUDGE BENTON: Mr. Lee, do you I suppose 10 therefore rest on your motion to dismiss? 11 MR. LEE: Yes, Your Honor. 12 JUDGE BENTON: Mr. Diaz-Arrastia? 13 MR. DIAZ-ARRASTIA: Thank you, Your Honor. 14 OPENING REMARKS ON BEHALF OF THE CLAIMANT 15 MR. DIAZ-ARRASTIA: Let me first address 16 the question of jurisdiction. There is no question 17 under Texas law that this panel has the authority to 18 decide its own jurisdiction. That is clearly stated in 19 the Triple A rules and it is also the Texas law. 20 If Vinmar had filed a motion to stay this 21 arbitration, then Mr. Lee is correct that the Court 22 would decide whether this case was subject to 23 arbitration, but Vinmar has chosen not to do that. It 24 is very clearly not the law in Texas that where the 25 opponent to arbitration chooses not to go to Court to</p>	<p style="text-align: right;">28</p> <p>1 argument. If we could turn on the projector, I will be 2 showing the panel some of the documents. This is a very 3 simple UCC breach of contract case. 4 What happened here is that Vinmar bought 5 mixed xylenes, which we've referred to as MX, betting 6 that the price would go up, but what happened instead is 7 that the price went into a long and precipitous decline. 8 By the delivery date that was negotiated in the 9 contract, the price of MX had fallen more than 10 25 percent. 11 By the end of the year of 2008, the price 12 of MX had fallen to more than 65 percent. It was really 13 a precipitous decline. And the price fell almost every 14 day. MX tends to track the price of crude oil and we 15 all know what happened to crude oil in the second half 16 of 2008. 17 Vinmar refused to accept the MX on a very 18 bad deal and they didn't perform, but that's a breach of 19 contract. Let's look at the -- at the arguments. And 20 it is correct, first of all, the UCC very much favors 21 the sale -- the formation of contracts and this favors 22 formality. 23 If you could take a look at 2-204(A). And 24 there it says it very clearly. This is the policy of 25 the UCC with regard to contract formation. A contract</p>
<p style="text-align: right;">27</p> <p>1 seek a stay, the proponent, Tricon in this case, has an 2 obligation to seek an order compelling it. 3 This case was actually -- this issue was 4 specifically addressed just in July by the Corpus 5 Christi Court of Appeal in the In Re: Rio Grande Xarine 6 case, which was cited in our brief in response to the 7 motion to arbitration and we've actually done a 8 supplemental brief to the panel that I will hand to you 9 right now, but it's mostly based on the Rio Grande case. 10 And the conclusion of the Rio Grande case 11 with regard to the argument that Mr. Lee is making -- I 12 hate to say it, but it's one word. They said it was 13 nonsensical. 14 MR. LEE: Do you have -- 15 JUDGE WOOD: Does Mr. Lee have a copy? 16 MR. LEE: -- a copy for me? 17 MR. DIAZ-ARRASTIA: Oh, I'm sorry. 18 What they said is it was nonsensical. 19 This panel can decide its own jurisdiction and this 20 panel does not have to wait for a Court to tell it it 21 has jurisdiction. Tricon as the proponent of 22 arbitration has no obligation to first institute 23 litigation in a Court to get an order compelling the 24 arbitration. 25 Let me address now the merits of Mr. Lee's</p>	<p style="text-align: right;">29</p> <p>1 for the sale of goods may be made in any manner 2 sufficient to show agreement, including conduct by both 3 parties which recognizes the existence of such a 4 contract. 5 Mr. Lee is right. Here the contract was 6 made through a broker and the parties did not 7 communicate with each other prior to the deal being 8 made. That is not unusual in petrochemicals trading and 9 there will be evidence of that from testimony. 10 In this case, the agent was the 11 broker -- the broker, I'm sorry, was the agent for both 12 sides. And we have actually cited in our prehearing 13 briefing the Den Norske case, which was a decision by 14 Judge Hughes in the Southern District of Texas, where he 15 said that's exactly right. 16 And what that means is that when the 17 broker says that there's a deal there's a deal and 18 that's an enforceable contract. The broker in this case 19 was Mr. Ed Leyman. We're going to see him by a video 20 deposition. He is probably the leading MX trader in the 21 United States. 22 On July 22, 2008, through instant message 23 communications and telephone communications, Mr. Leyman 24 brokered a deal. The terms of the deal was that Tricon 25 was going to sell MX to Vinmar. Both of these parties</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">30</p> <p>1 are trading companies. It was 5,000 metric tons of MX 2 at the price of 1310 -- \$1,310 per metric ton, a tight 3 delivery window, some -- in the first half of September, 4 between September 1st and September 15th, CFR Korea or 5 Taiwan with Vinmar to declare the discharge port, 6 meaning where in Korea or Taiwan the MX was going to be 7 unloaded by the 8th of August.</p> <p>8 And the evidence that you're going to hear 9 from Mr. Leyman and Mr. Lockwood is the delivery window 10 was particularly important, particularly important. 11 That is important because it takes 30 to 45 days to move 12 a vessel from the Gulf of Mexico to Korea or Taiwan and 13 can take longer than that if you have delays in the 14 Panama Canal, if you have bad weather.</p> <p>15 So if you're going to be declaring your 16 discharge port and you have a guaranteed delivery by the 17 15th of September, you have a very tight window, and 18 that is why we believe that we had to keep the option to 19 substitute Asian origin if our vessel slipped.</p> <p>20 This is an extension of frauds case. It 21 involves more than \$500, and that means that we need a 22 writing and we need a signature. As we know, a writing 23 is not required under the law to be a single document 24 and here we have several documents that form all of the 25 contracts.</p>	<p style="text-align: right;">32</p> <p>1 binders as well under Joint Exhibit 2. It's difficult 2 to read the copy.</p> <p>3 MR. DIAZ-ARRASTIA: It is the initial 4 confirm that was sent by Mr. Leyman to both Vinmar and 5 Tricon on July 22nd after the deal was made. It 6 contains all of the essential terms of the contract, 7 quantity, quality, delivery, payment, terms and a number 8 of other things, everything required to make a deal.</p> <p>9 I will point out on the top right-hand 10 corner there's the MOAB letterhead. That's a signature 11 under the UCC. Under the UCC, a signature may be 12 anywhere on a piece of paper and it can be a billhead or 13 a letterhead and MOAB was the agent for both sides so 14 that is official.</p> <p>15 That was Judge Hughes' decision in the Den 16 Norske case, exactly that. Nothing in here talks about 17 U.S. origin. And there will be evidence that if 18 U.S. origin was a critical term of the deal it would be 19 in the confirm, it would be in the firm bid given by 20 Vinmar and it would be in the deal.</p> <p>21 And let me just give you an example of a 22 case where that is done. If we can look at Tricon 23 Exhibit 1 quickly, please.</p> <p>24 MR. LEE: If I may just make one 25 statement. I hate to interrupt his presentation, but we</p>
<p style="text-align: right;">31</p> <p>1 Second is the signature, but under the UCC 2 signature is very, very broad. If we can take a look at 3 2-201, Comment 1, please. Let's see. It must be 4 signed. It must be signed, a word which includes any 5 authentication which identifies the party to be charged.</p> <p>6 Let's look at 1201(37). This is the 7 definition of signed under the UCC. Signed includes 8 using any symbol executed or adopted with present 9 intention to adopt or accept a writing.</p> <p>10 Now let's take a look at Comment 37. 11 There you go -- Signed does not require a complete 12 signature. The symbol may be printed, stamped or 13 written. And in an appropriate case, it may be found on 14 a billhead or letterhead.</p> <p>15 So it's very, very clear that for the UCC 16 a signature doesn't mean that somebody took a pen and 17 wrote his name down on a piece of paper. It can be even 18 just a letterhead. Let's take a look at some of the key 19 documents here.</p> <p>20 Let's first look at Joint Exhibit No. 2. 21 Is there any way so that we can get that on the screen 22 all at once? Fit to page. There you go.</p> <p>23 That is the principal document. That is 24 the initial confirm that was --</p> <p>25 MS. LARSON: Your Honors, they're in the</p>	<p style="text-align: right;">33</p> <p>1 do have some objections to their exhibits, including 2 this one. I just want to note that for the panel. I 3 don't think this has anything to do with this 4 proceeding, but I didn't want him to show that without 5 at least noting the objection.</p> <p>6 JUDGE BENTON: All right.</p> <p>7 MR. DIAZ-ARRASTIA: Okay. And if you -- 8 Tracy, if you could highlight during quality and maybe 9 zoom in on that.</p> <p>10 Product to be U.S. origin. That's the way 11 it's done if origin is important. It is important -- if 12 origin is important to the buyer it would be put up 13 front because it affects delivery. As I said before, if 14 you were loading a vessel on August the 8th in the Gulf 15 and you needed to get it to Taiwan by September 15th, 16 you might not make it.</p> <p>17 Now, there are actually three confirms in 18 this case. Let's first take a look at Joint Exhibit 3. 19 The evidence is going to be that after the first confirm 20 on July 22nd, on the same day, Mr. Wilson, the trader 21 for Vinmar, requested a change in the payment terms from 22 a 30-day to an at site letter of credit. That was 23 agreed to by Mr. Lockwood and the deal was modified.</p> <p>24 JUDGE BENTON: Yeah, let me -- let me 25 interrupt just for a second. Providing -- I don't</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">34</p> <p>1 know -- I don't -- I don't want to prejudice your 2 presentation, but to the extent you could partition 3 these issues of the merits and the jurisdictional 4 argument, it would really help us to focus. 5 MR. DIAZ-ARRASTIA: Well, Your Honor, the 6 problem that we have is that it's very hard to do that. 7 One of the reasons why Vinmar claims that a contract was 8 never made is because U.S. origin was a material term of 9 that contract that was not agreed to so I have to 10 address it. 11 JUDGE BENTON: All right. Very good. 12 MR. DIAZ-ARRASTIA: And I'm trying to go 13 in chronological order through the documentation. 14 JUDGE BENTON: Okay. 15 MR. DIAZ-ARRASTIA: But in any event, 16 there was one modification on July 22nd to change the 17 payment terms, but even on this second confirm that was 18 again sent to both sides, again there's no mention of 19 U.S. origin. 20 Then let's go to Joint Exhibit No. 4, and 21 this is the last confirm, which is the one that was 22 referred to by Mr. Lee, also exchanged by both parties. 23 And what happened here is that Mr. Lockwood noticed that 24 there was a mistake on the price term. 25 The price on the initial two confirms</p>	<p style="text-align: right;">36</p> <p>1 change in the payment terms and that was agreed to. 2 There's nothing that says that the parties can't agree 3 to modifications if that's what they want to do. 4 And this is what happened. On 5 July 23rd -- let's go to Exhibit J 5, please, Joint 6 Exhibit 5, and actually let's start there on that page 7 there towards the bottom of it where it Brad's e-mail to 8 Rick Wilson. 9 On July 23rd, the day after the deal was 10 initially made, Tricon sends its sale contract -- and we 11 have been referring to that in the briefing as Tricon 12 letter, but sends this to Rick Wilson. There's the 13 cover e-mail that we're looking at right now. And I am 14 just pointing that out to you to show the date and to 15 also show you that it is signed. There's an e-mail 16 signature that is a sufficient signature under the UCC. 17 Let's go to the first page after that. 18 Here it contains the essential terms. And it does not 19 change the essential terms of the contract, the price, 20 quantity, delivery, payment, et cetera. It does not 21 change that from the MOAB confirms. It's the same 22 thing. 23 We'll go to the next page. It does 24 contain the general terms and conditions of sale, 25 additional terms to the contract. There is going to be</p>
<p style="text-align: right;">35</p> <p>1 said -- was 1110 a metric ton when everybody agreed that 2 it was 1310. Mr. Lockwood called Mr. Leyman and said, 3 "Hey, there's a mistake on the price. Can you fix 4 that?" And it was fixed and that resulted in the third 5 confirm. 6 Three confirms exchanged between the 7 parties on July 22nd. They contain all of the essential 8 terms of the deal. And it is our position that the 9 contract was initially made on July 22nd and it is 10 memorialized in writing with a signature in these 11 documents, but it is not true that once that happens the 12 parties are bound or are prevented by Texas law from 13 modifying the contract or adding additional terms. 14 If we could take a look at UCC 2-209. And 15 there you go. An agreement -- Under the UCC, an 16 agreement modifying the contract within this chapter 17 needs no consideration to be binding. So under the UCC, 18 the parties can modify their contract at any time and 19 there's no requirement for consideration or any other 20 formality. The policy of the US -- UCC disfavors 21 formality. 22 What happens in this case is that 23 additional terms were negotiated and there were 24 modifications made and certainly one of the 25 modifications made was that Vinmar requested for a</p>	<p style="text-align: right;">37</p> <p>1 evidence that this is a very common thing to do in 2 petrochemicals trading, that after you do the confirm 3 and you have a deal you pass paper between yourselves. 4 You send the terms and conditions of sale. Arbitration 5 is contained here, Paragraph 9 of the terms and 6 conditions of sale. 7 On July 24th, the following day, 8 Mr. Wilson gives this letter to Laurentiu Pascu who 9 we'll hear from a video. He was Vinmar's operations 10 specialist. They take care of the deal once the trader 11 makes it to free up the trader to do more deals. 12 Take a look at Exhibit J 9, Joint 13 Exhibit 9. This is Mr. Pascu's e-mail to Rick Wilson in 14 the morning of July 29th, a few days after he received 15 the terms and conditions containing arbitration. He is 16 informing Mr. Wilson of his comments on the additional 17 terms. 18 JUDGE WOOD: Give me that exhibit number 19 again. 20 MR. DIAZ-ARRASTIA: It's Joint Exhibit 9. 21 A few hours later, Mr. Pascu sends his 22 comments to Vuk Rajevac, who we will also hear from. 23 Mr. Rajevac is Tricon's operations specialist in this 24 period, Mr. Pascu's counter-partner. 25 We can look at Joint Exhibit 13 now. And</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">38</p> <p>1 that's what Mr. Pascu tells Mr. Rajevac. Please enclose 2 our comments under sale confirmation. We shall revert 3 soon with our purchase order for your review. 4 Now, there's going to be evidence that no 5 one prepares and sends a pur -- says, "I'll send a 6 purchase order," if they didn't think they had a deal. 7 Obviously Mr. Rajevac thinks they had a deal. Let's 8 take a look at what Mr. Rajevac enclosed with this 9 e-mail on July 29. 10 What -- I would also point out that -- I'm 11 sorry. Mr. Pascu. I would also point out that 12 Mr. Pascu's e-mail is signed. That's that signature 13 within the UCC. If we could put it full -- so that we 14 can see it on the full page. 15 And we're going to go over this during the 16 evidence phase, but there is evidence that all -- that 17 that handwriting that you see on the Tricon letter on 18 the additional terms and conditions is Mr. Pascu's 19 handwriting. As you can see, he is scratching some 20 things out. He is asking for some things to be changed. 21 Look in the next page. Again, 22 more changes and comments that Mr. Pascu makes on the 23 Tricon terms and conditions. If you will look at the 24 next page on Paragraph 9, nothing on arbitration. He 25 does not have a problem with it. And nowhere in here is</p>	<p style="text-align: right;">40</p> <p>1 of those terms on which the writings of the parties 2 agree, but not the ones you don't agree to. 3 So as of July 29th, 2008, there was a 4 contract that consisted of all of the terms that the 5 parties agreed to and not the terms that they did not 6 agree to. Nowhere in there was there an agreement about 7 U.S. origin. There absolutely was an agreement about 8 arbitration. And the only term that the parties 9 discussed that they didn't agree to was demurrage time 10 bar. That's just not part of the contract, but that 11 doesn't mean that there is no contract. 12 As I said, Your Honor, I have alluded to 13 some of the evidence that is going to be heard. It is 14 intertwined with the merits of this case in a way 15 they -- if we want to create a full record of how this 16 contract was made, we're going to have to hear all of 17 the evidence except for my damages evidence, but this is 18 a preview of what you're going to hear. 19 JUDGE BENTON: All right. Any questions, 20 Judge Wood, for Mr. Diaz-Arrastia? 21 JUDGE WOOD: Not at this time. 22 JUDGE BENTON: Judge Davidson? 23 JUDGE DAVIDSON: Nope. 24 JUDGE BENTON: Mr. Diaz-Arrastia, do 25 you -- excuse me -- for the purposes of the record, rest</p>
<p style="text-align: right;">39</p> <p>1 there any mention of origin. 2 About 30 minutes later we get to 3 exhibit -- Joint Exhibit 14. And this is their response 4 that Mr. Rajevac sends to Mr. Pascu. And that is it. 5 He says, "Your comments on the contract are well noted 6 and accepted except for demurrage time bar which is 90 7 days." And, again, it's signed. 8 So at this moment, what we have is we have 9 a contract that was initially made on July 22nd and 10 which was modified by agreement of the parties on 11 July 29th. Some of the things that are contained in it 12 were requested by Tricon. Some of the things were 13 requested by Vinmar, but everything was agreed to with 14 the sole exception being demurrage. There was no 15 agreement on the demurrage time bar, but that is not 16 relevant in this case. There was never any demurrage. 17 Let's talk about 2-207, if you could go 18 back to that for a moment, just UCC 2-207. If you could 19 look at 2-207(B), additional terms are to be construed 20 as proposals for addition to the contract. Let's look 21 at 2-207(C), beginning Conduct by both parties which 22 recognizes the existence of a contract is sufficient to 23 establish a contract for sale although the writings of 24 the parties do not otherwise establish a contract. In 25 such case, the terms of the particular contract consist</p>	<p style="text-align: right;">41</p> <p>1 on your response to their motion to dismiss? 2 MR. DIAZ-ARRASTIA: Your Honor, if you 3 want to hear evidence on how this contract was formed, 4 then I have to put my witnesses on. I have given you a 5 preview of what I am going to say, but I am not able to 6 present my evidence on jurisdiction -- 7 JUDGE BENTON: Okay. 8 MR. DIAZ-ARRASTIA: -- without 9 simultaneously presenting my underlying merits. 10 JUDGE BENTON: I think what we would like 11 to do then is take a short recess for ten to 15 minutes 12 to deliberate upon the arguments that you each have 13 made. And then depending what the two or three of us 14 agree to, we'll come back and announce how we'll -- 15 JUDGE DAVIDSON: Could I ask a question of 16 Mr. Lee? 17 JUDGE BENTON: Certainly. Excuse me. 18 JUDGE DAVIDSON: You've indicated it's 19 your client's position that this panel has no 20 jurisdiction. Correct? 21 MR. LEE: Yes, Your Honor. 22 JUDGE DAVIDSON: Which, if I -- as I 23 understand the laws of jurisdiction therefore, that 24 would mean that should we go through the entire hearing 25 on the merits and determine that you win, make a</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">42</p> <p>1 determination on the merits that your client owes 2 nothing to Tricon, your argument would be that this 3 panel was without jurisdiction to make such a ruling? 4 MR. LEE: No, Your Honor, because -- well, 5 actually what I would say is the award is enforceable 6 against Tricon because they elected to proceed in this 7 forum. 8 JUDGE DAVIDSON: But jurisdiction isn't 9 something that can be given to anybody by conduct, can 10 it? 11 MR. LEE: I agree, Your Honor, with the 12 exception of it's really two issues. One, it's invited 13 error. I mean, they initiated this proceeding and 14 insisted that it go forward in Triple A. And so if -- I 15 think they're precluded from arguing against an award 16 that the panel might render against them. 17 It doesn't deal -- I don't think it does 18 away with the jurisdiction issue. I think we have a 19 jurisdiction issue that stays with the case throughout, 20 but certainly from Tricon's perspective I think a Court 21 would be fair in saying, "You elected this forum. You 22 invited the panel to make the error. You have to live 23 with that error" -- 24 JUDGE DAVIDSON: Okay. 25 MR. LEE: -- as opposed to us -- may I</p>	<p style="text-align: right;">44</p> <p>1 modification requires all of the elements of contract 2 formation, offer and acceptance to form a modification. 3 Whether there's consideration or not, the UCC says 4 that's not required, but it does require an offer and 5 acceptance. 6 And that question, whether there was an 7 acceptance, whether you could modify the agreement and, 8 two, whether there was an acceptance, that is an issue 9 for a Court to decide. 10 JUDGE WOOD: What is the -- is there a 11 joint exhibit number or where in the exhibits is the 12 document that your client sent on their letterhead? 13 MR. LEE: There is no document. 14 JUDGE WOOD: Was there one that Vinmar 15 sent? 16 MR. DIAZ-ARRASTIA: Your Honor, there is a 17 purchase order that Vinmar -- 18 JUDGE WOOD: Purchase order. 19 MR. DIAZ-ARRASTIA: -- prepared but did 20 not send. 21 JUDGE WOOD: Thank you. 22 MR. DIAZ-ARRASTIA: Now, if we could look 23 at that because we do have it and we do intend to 24 present it. 25 JUDGE WOOD: That's in somebody's</p>
<p style="text-align: right;">43</p> <p>1 make one other just quick comment before we break 2 because I think that the question was summed up at the 3 very end of Tricon's presentation, how the contract was 4 formed. That's what counsel said. 5 That question is fundamentally a question 6 for a Court to decide, how the contract was formed. Is 7 there a contract and what terms are included? That's a 8 decision that is for a Court. There are a number of 9 cases that have addressed that. The Rio Grande case is 10 distinguishable for two reasons. 11 Number one, there was no question there 12 was an arbitration agreement in the document that both 13 parties signed. The issue that the complaining party 14 raised is that that document had lapsed. And the Court 15 first found that the arbitration panel had that power to 16 make that decision and then secondly said but, you know, 17 you didn't have to go to Court first. 18 Here we have a separate issue, the 19 fundamental question. Most of the presentation was we 20 had an agreement on July 22nd. The broker confirm 21 satisfies the statute of frauds. That's what we're 22 suing on. 23 This modification argument, by the way, 24 has never -- it's not in any of the pleadings. It's 25 something that came up when we moved to dismiss, but</p>	<p style="text-align: right;">45</p> <p>1 exhibits? 2 MR. DIAZ-ARRASTIA: Let's take a look at 3 the Vinmar purchase order. Do you remember what that 4 is? 5 JUDGE WOOD: I remember reading -- I 6 remember reading it. 7 MR. DIAZ-ARRASTIA: Let's look at it. 8 JUDGE WOOD: My second question, 9 Mr. Lee -- 10 MR. DIAZ-ARRASTIA: Now, there was -- and 11 Mr. Lee talked about the offer and acceptance. When the 12 Tricon letter was sent by Mr. Lockwood and Mr. Wilson, 13 that's the proposal for a modification. Then when 14 Mr. Pascu commented on that, he accepted some of those 15 terms and made a proposal for modification on other 16 terms. And then when Mr. Rajevac said "Your comments 17 are all accepted," you have an acceptance. 18 JUDGE WOOD: My second question for 19 Mr. Lee goes to -- and I apologize for not finding the 20 case. Okay? But are you familiar with the case that's 21 been decided -- and I thought it was this year. Y'all 22 can figure out probably why. That was in the probate 23 cases. But a recent holding in Texas is that the 24 arbitration panel has to determine whether or not the 25 person that is alleged to contract who may be deceased</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">46</p> <p>1 now or may now be incompetent, whether that person had 2 capacity to contract by law in Texas now is decided by 3 the arbitrators and not a probate court. I don't know 4 if you would have ran into that case and I don't know 5 where it's even reported. I just -- I just happen to 6 know it was decided. 7 MR. DIAZ-ARRASTIA: Your Honor -- 8 JUDGE WOOD: And y'all can figure out why 9 so you can probably find the Court and then find it -- 10 MR. DIAZ-ARRASTIA: Your Honor -- 11 JUDGE WOOD: It's out of Probate Court 12 No. 2 and it's Houston Court of Appeals. I don't 13 remember the first -- 14 MR. DIAZ-ARRASTIA: Well -- 15 JUDGE WOOD: But I just didn't know if 16 anybody had been following these cases that -- you know, 17 trying to go back and forth maybe something will -- 18 MR. DIAZ-ARRASTIA: I don't know that 19 case, Your Honor, but the Vinmar purchase order -- 20 JUDGE WOOD: There it is. 21 MR. DIAZ-ARRASTIA: -- which was prepared 22 but not sent is Tricon Exhibit 10. And if you could 23 look -- Tracy, go down to the dispute resolution 24 provision. I think it is significant that it has the 25 law and arbitration -- and arbitration provision</p>	<p style="text-align: right;">48</p> <p>1 contract formation and what the terms of any contract 2 are will require presentation of evidence to the panel. 3 We make this determination without 4 prejudice to a later determination that either there was 5 no contract or that the contract did not contain an 6 arbitration clause. Given that finding, it will be 7 necessary for us to proceed to hear evidence. 8 JUDGE BENTON: And with that, 9 Mr. Diaz-Arrastia, we are prepared to proceed. As I 10 alluded to earlier this morning, our schedule -- I guess 11 it's almost 10:00 o'clock now. Rather than break at 12 about 11:30, which would be an hour and a half, maybe 13 we'll go to noon and then break for lunch then unless we 14 need a break sooner. 15 And if we -- so do you wish to make 16 further opening or are you prepared to make -- call your 17 first witness? And if your answer is you're prepared to 18 call your first witness, I want you to pause because I 19 want to address Mr. Lee. 20 MR. DIAZ-ARRASTIA: I think you have 21 mostly heard my opening. I have something sort of 22 previewing what our measure of damages is going to be, 23 but I don't know if that's really that necessary to 24 present. So it probably would make more sense just to 25 go ahead with my first witness.</p>
<p style="text-align: right;">47</p> <p>1 essentially like the one we're here before you-all. 2 JUDGE WOOD: My question got answered as 3 to why I had read that document and nobody had talked 4 about it. I appreciate that. I think that's it. 5 MR. LEE: I wanted to address real quick. 6 As counsel said, that document was never sent, but I 7 think, Your Honor -- I'm not familiar with the specific 8 case on the probate, but I do understand there is a lot 9 of cases -- 10 JUDGE WOOD: And I haven't read it either. 11 MR. LEE: -- that talk about if your issue 12 is to the capacity or to duress, that's one issue as 13 opposed to basic contract formation. So there is a 14 distinction that the cases recognize. 15 JUDGE BENTON: I have 9:35 so let's -- 16 let's just say at 9:50 we'll resume and see where we go 17 from there. All right? 18 (Recess from 9:34 a.m. to 9:51 a.m.) 19 JUDGE BENTON: Okay. We are back on the 20 record. 21 The panel has arrived at a unanimous 22 determination and that determination will be announced 23 by Judge Davidson. 24 JUDGE DAVIDSON: The panel will decline to 25 grant the motion to dismiss. We find that the issues of</p>	<p style="text-align: right;">49</p> <p>1 JUDGE BENTON: Okay. Do you want to make 2 further opening, Mr. Lee, or do you want to reserve 3 until they rest? 4 MR. LEE: I think it would be helpful if I 5 made just a couple of brief comments because I addressed 6 just the motion to dismiss, but if you would indulge me. 7 I'll keep it very short, but I do think there's a couple 8 of things I want to say. 9 Just so I can keep the record clear, I 10 appreciate the running objection. I just want to note 11 that we obviously respectfully disagree, but we're going 12 to continue to participate subject to the objection to 13 the panel's jurisdiction. And as I understand it, I do 14 not need to continue from here to raise that and waste 15 time doing that all day and every day? 16 JUDGE BENTON: That's correct. 17 MR. LEE: Okay. Thank you. 18 OPENING REMARKS ON BEHALF OF THE RESPONDENT 19 MR. LEE: If I can just make a couple of 20 quick comments. The contract requires a number of 21 elements, but two very key ones are you must have mutual 22 assent, in other words, you must agree on what it is 23 that is the subject of the contract and you must have 24 mutual intent to be bound. 25 We think both of those are lacking in this</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">50</p> <p>1 case. There was never an agreement on the terms of a 2 contract. This deal was all done through a broker, 3 Mr. Leyman. You are going to hear testimony from 4 Mr. Wilson at Vinmar who said that his firm terms of the 5 deal included U.S. origin MX. 6 Apparently Tricon's witness will say that 7 their term was open origin MX. Those two terms do not 8 match up. Nevertheless, Mr. Leyman, acting as a broker 9 and without authority to match the parties, went ahead 10 and matched the parties, told each side, "You have an 11 agreement." 12 Vinmar reasonably believed it did have an 13 agreement and an agreement on its terms. And so yes, 14 there is action within Vinmar on the days following the 15 discussion with Mr. Leyman where there's contract 16 discussions. There are things put in SAP. There are 17 actions taken in furtherance of what Vinmar believed to 18 be a deal. 19 The evidence will show you that on 20 July 31st, several days after the discussions with 21 Mr. Leyman, a Tricon representative informed Vinmar that 22 it very well may supply Asian origin mixed xylenes. And 23 the immediate response from Vinmar was, No, no, no, no. 24 This is a U.S. origin deal. You must supply U.S. origin 25 MX.</p>	<p style="text-align: right;">52</p> <p>1 And certainly, the way that Tricon has approached this 2 case, they didn't -- they evidenced their intent not to 3 be bound by the broker confirmation and the sales 4 contract never resulted in an agreement on all of the 5 terms and it was never signed. 6 We also -- we'll get in -- I'll wait on 7 the damages, but we certainly have a position on the 8 damages. We don't believe that Tricon has been damaged 9 in this case. It didn't have mixed xylenes in 10 inventory. It didn't do anything in furtherance of this 11 agreement when Vinmar told them, Wait a minute. We've 12 had a misunderstanding. 13 And at the end of the day, that's really 14 what this is all about, it's a misunderstanding. The 15 broker messed up on the communications. There are no 16 notes from the broker. There are no tape recordings, 17 although he testified and told our trader that he, in 18 fact, recorded tape -- phone conversations. Those are 19 missing. We don't have anything from the broker except 20 for a handwritten confirmation that he said he prepared 21 and that's wrong. 22 It makes a million dollar mistake on the 23 price. And so it's our contention that the broker 24 mangled the terms. He told us, "You have a deal on your 25 terms." He told Tricon they had a term on their -- or a</p>
<p style="text-align: right;">51</p> <p>1 And so if there -- there never was mutual 2 assent between the parties. Tricon refused to give 3 U.S. origin. Vinmar demanded U.S. origin. Mr. Leyman 4 and all the witnesses agree that if the broker does not 5 have identical deal terms then there is no agreement and 6 so we believe that the evidence that we will present to 7 you will show that there was a lack of mutual assent on 8 the key term of the agreement, what is the product? 9 The other issue is mutual intent to be 10 bound. Both parties must intend to be bound by an 11 agreement and the fact that we're here today I think 12 demonstrates very clearly that Tricon never intended to 13 be bound by the broker confirmation, the document sent 14 by Mr. Leyman which does not have an arbitration 15 provision. They didn't intend to be bound by it. 16 They're here in arbitration. What they're 17 saying is, "No, no, no. Our sales contract is the 18 document that governs this relationship now. The sales 19 contract makes it clear that it must be signed and it's 20 signed by both parties." Mr. Lockwood never signed the 21 agreement for Tricon. Mr. Wilson never signed the 22 agreement for Vinmar and there never was agreement on 23 all of the terms of the sales contract. 24 So you don't have mutual assent from the 25 very get-go, in which case you never have an agreement.</p>	<p style="text-align: right;">53</p> <p>1 deal on their terms. There was some interaction between 2 the parties, both sides believing that their agreement 3 was the agreement. 4 And as soon as it became an issue, as soon 5 as Tricon -- Vinmar was aware that Vinmar had a 6 different understanding, had been told something else by 7 the broker, within six or seven business days, depending 8 upon how you count it, Tricon -- or Vinmar said, "We 9 don't have a deal. We never came to shore on the 10 principal product." 11 And so with that, I will rest at this 12 point. 13 JUDGE BENTON: Okay. Mr. Diaz-Arrastia, 14 you want to call your first witness? 15 MR. DIAZ-ARRASTIA: Yes, Your Honor. 16 I will call Mr. Brad Lockwood. 17 JUDGE BENTON: Mr. Lockwood. If you will 18 raise your right hand. 19 (At this time the witness was duly sworn 20 by Judge Benton.) 21 JUDGE BENTON: All right. Very good. 22 Mister -- 23 MR. DIAZ-ARRASTIA: It's 24 Mr. Diaz-Arrastia. 25 JUDGE BENTON: Diaz-Arrastia. Did I make</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">54</p> <p>1 that mistake earlier?</p> <p>2 MR. DIAZ-ARRASTIA: Yes, but that's all</p> <p>3 right. You know, when you have a name like mine, you</p> <p>4 respond to most noises.</p> <p>5 JUDGE BENTON: All right,</p> <p>6 Mr. Diaz-Arrastia.</p> <p>7 MR. DIAZ-ARRASTIA: I knew you meant me.</p> <p>8 JUDGE BENTON: I was looking at you when I</p> <p>9 said it.</p> <p>10 MR. DIAZ-ARRASTIA: Yes. I knew you meant</p> <p>11 me.</p> <p>12 JUDGE BENTON: Very good.</p> <p>13 BRAD JASON LOCKWOOD,</p> <p>14 having been first duly sworn, testified as follows:</p> <p>15 DIRECT EXAMINATION (10:00 a.m.)</p> <p>16 BY MR. DIAZ-ARRASTIA:</p> <p>17 Q. Good morning, Mr. Lockwood.</p> <p>18 A. Good morning.</p> <p>19 Q. Could you state your full name for the record,</p> <p>20 please?</p> <p>21 A. Sure. Brad Jason Lockwood.</p> <p>22 Q. Okay. And please tell the panel a little bit</p> <p>23 about your education and background.</p> <p>24 A. Okay. I got a marketing degree from Texas A&M</p> <p>25 in College Station. I graduated in May of 1997.</p>	<p style="text-align: right;">56</p> <p>1 have you been personally involved in with a U.S.</p> <p>2 counterparty where the trade has not been performed in</p> <p>3 the end?</p> <p>4 A. One.</p> <p>5 Q. Is it this trade?</p> <p>6 A. Yes, it is.</p> <p>7 Q. Tell me a little bit about mixed xylenes,</p> <p>8 sometimes referred to as MX. Correct, sir?</p> <p>9 A. Yes.</p> <p>10 Q. Is that a commodity product?</p> <p>11 A. Yes, it is.</p> <p>12 Q. What are the principal places in the world</p> <p>13 where mixed xylenes are produced?</p> <p>14 A. It's produced in the U.S. It's produced in</p> <p>15 Asia. It's produced in Europe, the Middle East. It's</p> <p>16 basically produced all over the world.</p> <p>17 Q. And is it correct, sir, that within a certain</p> <p>18 specification, since it's a commodity, MX produced in</p> <p>19 the U.S., is it the same as MX produced in Asia or</p> <p>20 Europe or wherever?</p> <p>21 A. Yes, it is.</p> <p>22 Q. When Tricon trades on MX and sells MX, does it</p> <p>23 take title to the product before it sells it?</p> <p>24 A. Yes, we do.</p> <p>25 Q. Okay. And I understand that there will be</p>
<p style="text-align: right;">55</p> <p>1 Q. And, sir, are you now employed by Tricon</p> <p>2 Energy?</p> <p>3 A. Yes, I am.</p> <p>4 Q. And what is your position at Tricon?</p> <p>5 A. I am both one of the owners of the company and</p> <p>6 a partner as well as the trader -- a trader.</p> <p>7 Q. And how long have you been a trader, sir?</p> <p>8 A. Full time since January of 2005. Part time as</p> <p>9 I was transitioning out of my operations specialist role</p> <p>10 at the end of 2004.</p> <p>11 Q. Okay. And is it normal at Tricon that people</p> <p>12 start out as operations specialists and then go on to</p> <p>13 become traders if they're successful?</p> <p>14 A. Yes.</p> <p>15 Q. And what materials or products do you trade,</p> <p>16 sir?</p> <p>17 A. I handle -- on the aromatics side, I trade</p> <p>18 both mixed xylene, paraxylene, orthoxylene and toluene.</p> <p>19 Q. And how many trades have you personally made</p> <p>20 in your career?</p> <p>21 A. 900.</p> <p>22 Q. Now, that's a very precise number. Did you</p> <p>23 look that up over the weekend?</p> <p>24 A. Yes, I did.</p> <p>25 Q. And tell me, Mr. Lockwood, how many trades</p>	<p style="text-align: right;">57</p> <p>1 testimony that you could enter into a contract to sell</p> <p>2 MX before you own it?</p> <p>3 A. Yes. That's when we're selling short.</p> <p>4 Q. But do you have to take title before you can</p> <p>5 actually deliver it?</p> <p>6 A. Yes, you do.</p> <p>7 Q. Okay. So Tricon is not just a middle man</p> <p>8 then?</p> <p>9 A. That's correct.</p> <p>10 Q. Is Tricon exposed to market risk?</p> <p>11 A. Every day.</p> <p>12 Q. If you're buying and the price falls, you can</p> <p>13 make money. If you're buying and the price rises, you</p> <p>14 lose money?</p> <p>15 A. You need to rephrase that, please.</p> <p>16 Q. I'm sorry. I said it backwards.</p> <p>17 A. You were incorrect in what you said.</p> <p>18 Q. Yeah. If you -- in this case we're the</p> <p>19 seller. If you sell MX and the price falls, you've made</p> <p>20 a good deal. You've made money?</p> <p>21 A. That's correct.</p> <p>22 Q. And selling in this deal -- if after you sell</p> <p>23 the price rises you've lost money because you have to go</p> <p>24 get it?</p> <p>25 A. That's correct.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">58</p> <p>1 Q. That's the market risk?</p> <p>2 A. That's correct.</p> <p>3 Q. Let's talk about the transaction that is the</p> <p>4 subject of our dispute. Did you deal through a broker,</p> <p>5 sir?</p> <p>6 A. Yes, I did.</p> <p>7 Q. And was that broker Ed Leyman?</p> <p>8 A. Yes, he was.</p> <p>9 Q. Did you know Mr. Leyman before the Vinmar</p> <p>10 transaction?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Had you made deals with Mr. Leyman before?</p> <p>13 A. I have.</p> <p>14 Q. Tell us, sir, how many brokers in the U.S.</p> <p>15 deal in MX?</p> <p>16 A. I'd say as of today there are three, Ed Leyman</p> <p>17 at MOAB, Kevin Kilkeary at a company called Blue Ocean</p> <p>18 and -- I'm forgetting the third name, but he works at a</p> <p>19 company called Fusion. So those are the three that</p> <p>20 trade MX or broker MX.</p> <p>21 Q. And do you deal with all of them, sir?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Tell me, what is Mr. Layman's reputation in</p> <p>24 the industry as a broker?</p> <p>25 A. He -- I think he's one of the most senior</p>	<p style="text-align: right;">60</p> <p>1 Q. When that happens, does the broker work for</p> <p>2 both sides of the deal?</p> <p>3 A. Yes, he does.</p> <p>4 Q. When you were working on this deal, had you</p> <p>5 requested that Mr. Leyman keep your name confidential?</p> <p>6 A. I did.</p> <p>7 Q. And why is that, sir?</p> <p>8 A. The market was starting to become weak and I</p> <p>9 did not want to have my name out there as being one of</p> <p>10 the sellers.</p> <p>11 Q. Are you the only trader who does this?</p> <p>12 A. No.</p> <p>13 Q. Is that a common request that's made to</p> <p>14 brokers?</p> <p>15 A. Yes, it is.</p> <p>16 Q. Do you sometimes not request confidentiality?</p> <p>17 A. Yes, I do.</p> <p>18 Q. If you do not request confidentiality, do you</p> <p>19 expect that your identity will not be disclosed?</p> <p>20 A. Can you --</p> <p>21 Q. If you -- if you do not request</p> <p>22 confidentiality, what do you think is going to happen?</p> <p>23 A. I think if the other side asks who's on the</p> <p>24 other side that they'll tell them by name.</p> <p>25 Q. And do you think that happens even if the</p>
<p style="text-align: right;">59</p> <p>1 brokers, having the most experience, so I think</p> <p>2 everybody counts on him as being one of the most</p> <p>3 reliable and senior brokers in the industry.</p> <p>4 Q. In your personal dealings with Mr. Leyman,</p> <p>5 have you found that reputation to be deserved?</p> <p>6 A. Definitely.</p> <p>7 Q. Now, who was the trader on the Vinmar side of</p> <p>8 the transaction in this deal?</p> <p>9 A. Dr. Rick Wilson.</p> <p>10 Q. And did you know Rick Wilson before this</p> <p>11 transaction?</p> <p>12 A. Yes, I did.</p> <p>13 Q. How did you know him before this transaction?</p> <p>14 A. Once he joined Vinmar, we took him to lunch to</p> <p>15 discuss opportunities that we could do together on</p> <p>16 business.</p> <p>17 Q. And was this your first deal with Mr. Wilson?</p> <p>18 A. Yes, it was.</p> <p>19 Q. Before the deal was made, did you communicate</p> <p>20 directly with Mr. Wilson or did you communicate only</p> <p>21 through Mr. Leyman, the broker?</p> <p>22 A. Only through Mr. Leyman.</p> <p>23 Q. Is that commonly the way things are done in MX</p> <p>24 trading?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">61</p> <p>1 other side requested confidentiality but you did not?</p> <p>2 A. Sure.</p> <p>3 Q. And has it ever happened to you that</p> <p>4 Mr. Leyman has refused to disclose the identity of a</p> <p>5 counterparty in the deal?</p> <p>6 A. All the time.</p> <p>7 Q. Now, even if he disclosed your identity</p> <p>8 because you did not request --</p> <p>9 A. That's correct.</p> <p>10 Q. -- confidentiality?</p> <p>11 A. That's correct.</p> <p>12 Q. Now, let me ask you, Mr. Lockwood, during the</p> <p>13 negotiation of this deal when you were working with</p> <p>14 Mr. Leyman and Mr. Leyman was working with Mr. Wilson,</p> <p>15 was there any mention or discussion of the mixed xylene</p> <p>16 having to be of U.S. origin?</p> <p>17 A. No, there wasn't.</p> <p>18 Q. What did you-all discuss during the</p> <p>19 negotiation of the deal?</p> <p>20 A. We discussed the price, the quality, the</p> <p>21 quantity, the fact that Vinmar needed flexibility on the</p> <p>22 discharge port, wanting both Korea or Taiwan. He wanted</p> <p>23 that in his option. We discussed the Incoterms being</p> <p>24 CFR and we discussed the payment terms.</p> <p>25 Q. Okay. Was there specific discussion of the</p>

16 (Pages 58 to 61)

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">62</p> <p>1 delivery window?</p> <p>2 A. Yes, there was.</p> <p>3 Q. Okay. And that was Mr. Wilson was asking for</p> <p>4 first half of September?</p> <p>5 A. Yes. He needed a very narrow window, first</p> <p>6 half of September.</p> <p>7 Q. Was that term very important to Mr. Wilson?</p> <p>8 A. Yes, it was.</p> <p>9 MR. LEE: Objection. Calls for</p> <p>10 speculation.</p> <p>11 Q. (BY MR. DIAZ-ARRASTIA) Well, did Mr. Leyman</p> <p>12 tell you that was very important to Mr. Wilson?</p> <p>13 MR. LEE: Objection. Leading.</p> <p>14 A. Yes, he did.</p> <p>15 JUDGE BENTON: It's overruled.</p> <p>16 A. He did.</p> <p>17 Q. (BY MR. DIAZ-ARRASTIA) Mr. Lockwood, you have</p> <p>18 some notebooks in front of you and they are labeled</p> <p>19 Joint Exhibits, Tricon Exhibits and Vinmar Exhibits. If</p> <p>20 you will take a look at the joint exhibits and go to</p> <p>21 No. 2, Joint Exhibit No. 2. That's at the second page.</p> <p>22 MR. DIAZ-ARRASTIA: Tracy, could you put</p> <p>23 that in full page?</p> <p>24 Q. (BY MR. DIAZ-ARRASTIA) And, Mr. Lockwood, is</p> <p>25 that the confirm that you received from Ed Leyman after</p>	<p style="text-align: right;">64</p> <p>1 Q. Okay. And let me ask you, Mr. Lockwood, did</p> <p>2 you think it was unusual to receive an amended confirm</p> <p>3 when there was a modification in the terms?</p> <p>4 A. I expected it.</p> <p>5 Q. Now, if you could take a look at the note near</p> <p>6 the bottom.</p> <p>7 MR. DIAZ-ARRASTIA: Tracy, see if you can</p> <p>8 zoom in on that, please.</p> <p>9 Q. (BY MR. DIAZ-ARRASTIA) Okay. And it says,</p> <p>10 "If there is anything outlined contrary to your</p> <p>11 understanding of our agreement, please notify us</p> <p>12 immediately by facsimile." Did you see that when you</p> <p>13 received these two confirms?</p> <p>14 A. Yes, I did.</p> <p>15 Q. And, sir, do traders review confirms as soon</p> <p>16 as they get them?</p> <p>17 A. They're required to.</p> <p>18 Q. Okay. And why is that important?</p> <p>19 A. Because you must review what the broker is</p> <p>20 saying you agreed to.</p> <p>21 Q. Now, when you reviewed Joint Exhibits 2 and 3,</p> <p>22 did you find something that was contrary to your</p> <p>23 understanding?</p> <p>24 A. Definitely.</p> <p>25 Q. And what was that?</p>
<p style="text-align: right;">63</p> <p>1 the deal was made?</p> <p>2 A. This was the initial confirm, yes.</p> <p>3 Q. Did you learn that after this initial confirm</p> <p>4 was sent out Mr. Wilson requested through Mr. Leyman for</p> <p>5 a change in the payment terms?</p> <p>6 A. Yes, I did.</p> <p>7 Q. And what was that change that was requested?</p> <p>8 A. We had agreed to 30 days from loading as the</p> <p>9 payment terms and he requested to be changing to LC</p> <p>10 documentary -- or a documentary letter of credit at site</p> <p>11 for payment terms.</p> <p>12 Q. Okay. And did you agree to that modification?</p> <p>13 A. After a discussion internally, I did agree to</p> <p>14 it, yes.</p> <p>15 Q. Okay. And you heard about it from Mr. Leyman.</p> <p>16 Is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And you told Mr. Leyman, "Yes, we're okay with</p> <p>19 that"?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Could we now turn the page? Go to</p> <p>22 Joint Exhibit No. 3. Okay. And is this the confirm</p> <p>23 that you received after that modification in the payment</p> <p>24 terms?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">65</p> <p>1 A. The price was shown \$1 million below what I</p> <p>2 agreed to.</p> <p>3 Q. And let's take a look at it. If you just look</p> <p>4 at -- well, if we can go to J 2 first. There you go.</p> <p>5 We went over it. Price -- that's right. I'm sorry.</p> <p>6 1,110 per metric ton.</p> <p>7 And what had -- what was the price that</p> <p>8 had been agreed to?</p> <p>9 A. 1310 a metric ton.</p> <p>10 Q. Okay. Did you communicate that to Mr. Leyman?</p> <p>11 A. I did even prior to him requesting the payment</p> <p>12 change. So when I received the second confirmation, I</p> <p>13 pointed out to Ed Leyman that that price is still shown</p> <p>14 as incorrect.</p> <p>15 Q. Okay. And can we go over and see joint --</p> <p>16 look at Joint Exhibit 4? And if we could look at the</p> <p>17 price term.</p> <p>18 MR. DIAZ-ARRASTIA: And if you could zoom</p> <p>19 in on that, Tracy.</p> <p>20 Q. (BY MR. DIAZ-ARRASTIA) And here Mr. Leyman</p> <p>21 corrected the price term?</p> <p>22 A. Yes.</p> <p>23 Q. And Mr. Wilson agreed with this. Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Mr. Lockwood, in any of these three</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">66</p> <p>1 confirms -- and let me ask you something. Were all of 2 these confirms delivered by Mr. Leyman to the parties on 3 July 22nd? 4 A. The 22nd or the morning of the 23rd, but I 5 believe it was the 22nd. 6 Q. And do any of these three confirms mention 7 anything about the origin of the product? 8 A. No, they do not. 9 Q. And when we talk about origin of the product, 10 what does that mean? 11 A. Where the product was produced. 12 Q. Okay. Where it's manufactured? 13 A. That's correct. 14 Q. Okay. Now, Mr. Lockwood, does it ever happen 15 that sometimes a trader may specify a particular product 16 origin in his deal? 17 A. I have done so myself. 18 Q. Okay. And tell me about that or tell the 19 panel about that. Excuse me. 20 A. Okay. When I've had product that I've sold 21 into Mexico, I've had to buy U.S. origin specifically so 22 that I could comply with NAFTA Treaty because the U.S. 23 is given preferential treatment delivering product into 24 Mexico to avoid duties going into Mexico. 25 So if you have product that was produced</p>	<p style="text-align: right;">68</p> <p>1 here. Would somebody please tell me and get on the 2 record what MX is actually used for -- 3 THE WITNESS: Sure. 4 JUDGE DAVIDSON: -- what its everyday 5 usage is? 6 MR. DIAZ-ARRASTIA: Excuse me. That's a 7 good thing to talk about. 8 JUDGE BENTON: Everybody knows that, Mark. 9 JUDGE DAVIDSON: Okay. Well -- 10 Q. (BY MR. DIAZ-ARRASTIA) Mr. Lockwood, could 11 you explain to the panel -- 12 A. Sure. 13 Q. -- what MX is used for? 14 A. Mixed xylene has two primary uses. The first 15 is going into making paraxylene which then goes into 16 making -- I'll just say paraxylene is used in the making 17 of polyester. 18 It goes into making polyester, which is 19 obviously a substitute for cotton. So the number one 20 use is predominantly in Asia to produce polyester. 21 JUDGE DAVIDSON: Okay. 22 A. The number two use is to go into gasoline 23 blending. Mixed xylene has an octane rating of 104 so 24 sometimes when people are trying to blend up gasolines 25 so that you have an octane of 87, 89 or 93 at your pump,</p>
<p style="text-align: right;">67</p> <p>1 in the U.S. when you deliver it to Mexico, you avoid a 2 certain duty on the import into Mexico because of the 3 NAFTA treaty between the two countries. 4 Q. Okay. Now, if you need a product with a 5 particular origin, is that something that has to be 6 dealt with up front in your negotiations? 7 A. Definitely. 8 Q. And why is that, sir? 9 A. It's impossible to negotiate with people after 10 the facts. If you -- if you need something up front, 11 you have to ask for it so the producer knows that they 12 have to guarantee something that was produced in the 13 U.S. versus giving you some other supply. 14 Q. If you have to guarantee the origin of the 15 product, can that affect your ability to meet a delivery 16 date? 17 A. Can you repeat that? 18 Q. If you have to guarantee the origin of a 19 product, can that -- can that affect your ability to 20 meet a specific delivery date that you guarantee? 21 A. Definitely, because it limits your ability to 22 substitute the cargo with other origins. 23 Q. Okay. 24 JUDGE DAVIDSON: This is going to sound 25 simple. Maybe I should have looked it up before we came</p>	<p style="text-align: right;">69</p> <p>1 they can add mixed xylene to the gasoline which blends 2 up the octane to meet the rating at the pump. 3 JUDGE DAVIDSON: Thank you. 4 Q. (BY MR. DIAZ-ARRASTIA) Now, Mr. Lockwood, if 5 you would take a look at the notebook that is marked as 6 the Tricon Exhibits. 7 A. Yes. 8 Q. First look at Tricon Exhibit No. 1. 9 MR. LEE: And if I may, I object to the 10 relevance of this document. It has nothing to do with 11 this transaction and Vinmar certainly was not a party to 12 whatever this document purports to be. 13 JUDGE BENTON: Is this used for 14 demonstrative -- 15 MR. DIAZ-ARRASTIA: It is for 16 demonstrative purposes, Your Honor. The purpose is to 17 show what a confirm looks like when the parties required 18 origin in the negotiations. 19 JUDGE BENTON: I'm going to -- we're going 20 to allow it. It's received. 21 Q. (BY MR. DIAZ-ARRASTIA) Now, Mr. Lockwood, if 22 you would look at Tricon Exhibit 1. And this is a MOAB 23 confirm in another deal that Tricon has done with 24 mister -- with MOAB. Correct? 25 A. Yes.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">70</p> <p>1 Q. And if you would look in the quality portion 2 of this document, does it specifically say product to be 3 of U.S. origin? 4 A. Yes, it does. 5 Q. And that is what you would expect to see in 6 the confirm if origin was discussed during the initial 7 negotiation leading to the confirm? 8 A. Yes, I would. 9 Q. If origin is important to you as a buyer, 10 would you put that in the firm bid that you submit to 11 the broker? 12 A. You would have to. 13 Q. Now, let's take a look at Exhibit T 2, Tricon 14 Exhibit No. 2. And this is another similar MOAB 15 confirm? 16 MR. LEE: I have the same objection. 17 JUDGE BENTON: Same objection? 18 Yeah. We're going to -- we'll allow it. 19 Q. (BY MR. DIAZ-ARRASTIA) And this is another 20 MOAB confirm in another deal that Tricon did with MOAB. 21 Correct, sir? 22 A. Yes, it is. 23 Q. And on the quality term, what does that say 24 about origin? 25 A. 99.70 minimum paraxylene purity. Product must</p>	<p style="text-align: right;">72</p> <p>1 earlier in the examination and I thought Mr. Runions had 2 piped up. 3 MR. LEE: No, no. That was me. I think I 4 objected to speculation but -- 5 JUDGE BENTON: All right. Thanks. Let's 6 proceed. 7 Q. (BY MR. DIAZ-ARRASTIA) And let's look in 8 the -- at the bottom part of the first page of Joint 9 Exhibit 5. Tell us what this is, Mr. Lockwood. 10 A. I attached our sales letter to Rick Wilson 11 with a copy to my colleagues and just telling him, 12 "Thank you for the business and here's a copy of our 13 letter for proposing additional terms." 14 Q. Okay. And if you could turn to the second 15 page of Joint Exhibit 5, that is what you referred to as 16 your sales letter? 17 A. That's correct. 18 Q. And does this sales letter -- beginning on 19 the -- first let's talk about the first page. Are the 20 terms spelled out in the first page of this Tricon 21 letter the same terms that were contained in the MOAB 22 confirm? 23 A. They are, yes. 24 Q. And let's now look at the second page. And 25 beginning with the second page, Mr. Lockwood, are these</p>
<p style="text-align: right;">71</p> <p>1 be non-Iranian or Chinese origin. 2 Q. And let's just take another look -- quick look 3 at T 3, Tricon Exhibit 3. 4 And, again, sir, this is another example 5 of what happens when origin is discussed in negotiation 6 and this one says, "No Iranian or Chinese origin." 7 Correct, sir? 8 A. Yes, that's correct. 9 Q. If you would now go back to the Joint Exhibit 10 notebook, Mr. Lockwood, and open up Joint Exhibit No. 5. 11 JUDGE BENTON: And just a second. I 12 thought I understood Mr. Runions to have objected 13 earlier to something. Am I -- did I make a mistake? 14 Have you -- during a question I thought Mr. Runions had 15 objected earlier on this witness. 16 Have you had this witness this whole time? 17 Are you going to have -- are you going to do the cross 18 on this witness? 19 MR. LEE: Yes. 20 JUDGE BENTON: Okay. I thought it was 21 Mr. Runions' witness. 22 MR. LEE: No. I'm sorry. No, no, no, 23 Your Honor. I believe it was me and I just was 24 objecting to the -- 25 JUDGE BENTON: Now, there was a question</p>	<p style="text-align: right;">73</p> <p>1 Tricon's terms and conditions of sale? 2 A. They are, yes. 3 Q. In your industry, is it common that after a 4 deal is made you send a letter with your terms and 5 conditions of sale to your counterparty? 6 A. Yes. Both sides typically pass paper as they 7 call it. 8 Q. It's sometimes called passing paper? 9 A. Yes. 10 Q. When you sent Exhibit 5, was it your intention 11 to say, "The deal that we had before with Ed Leyman, 12 that's canceled. This is the new deal"? 13 A. Not at all. 14 MR. LEE: Objection. Leading. 15 JUDGE BENTON: It's overruled. 16 Q. (BY MR. DIAZ-ARRASTIA) What were you doing 17 with Exhibit 5? 18 A. Just proposing additional terms, which is 19 standard for people to do. 20 Q. Does it sometimes happen in the industry that 21 you propose additional terms but some of those 22 additional terms are not agreed to? 23 A. Yes. It happens quite often actually. 24 Q. Does it sometimes happen in the industry that 25 you propose additional terms and none of the additional</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">74</p> <p>1 terms are agreed to?</p> <p>2 A. I would say that would be pretty rare because</p> <p>3 some -- most of the time these are pretty boilerplate</p> <p>4 additional terms that both sides usually do, but I guess</p> <p>5 in theory it's possible.</p> <p>6 Q. And does that mean that you don't have a deal?</p> <p>7 A. Not at all.</p> <p>8 Q. Let's take a look at the last page of this</p> <p>9 letter. Well, first of all, let's look at Paragraph 9</p> <p>10 on this J 5. Is that the arbitration provision, sir?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Now, let's look at the last page. And there</p> <p>13 are a couple of signature lines. Correct, sir?</p> <p>14 A. Yes, there are.</p> <p>15 Q. Did you expect that Exhibit 5 would be signed</p> <p>16 by you and Mr. Wilson?</p> <p>17 A. No. I never sign my contracts.</p> <p>18 Q. Okay. Are these documents ever signed?</p> <p>19 A. Unless they're a long-term contract with the</p> <p>20 company over a period of a year usually, then they're</p> <p>21 usually never signed.</p> <p>22 Q. Okay. They're treated differently whether</p> <p>23 you're dealing with a long-term contract or a spot</p> <p>24 contract. Is that what you mean?</p> <p>25 A. In theory, once you agree to all the material</p>	<p style="text-align: right;">76</p> <p>1 Q. Give me some examples of the contract terms</p> <p>2 that an operation specialist would negotiate.</p> <p>3 A. Inspection fees, interest, demurrage, law and</p> <p>4 jurisdiction, title and risk, those kind of things.</p> <p>5 Q. Would the operations specialist negotiate the</p> <p>6 dispute resolution provisions?</p> <p>7 A. Sure.</p> <p>8 Q. And what about credit terms, what needs to be</p> <p>9 in the letter of credit, things like that?</p> <p>10 A. Yes, definitely.</p> <p>11 Q. Mr. Lockwood, what happened to the price of</p> <p>12 mixed xylenes after July 22nd, 2008?</p> <p>13 A. Through what time period?</p> <p>14 Q. Well, let's say for the rest of that year.</p> <p>15 A. It was a historical fall.</p> <p>16 Q. Okay. Can we -- can you take a look at</p> <p>17 Exhibit 32 in the Tricon exhibit book, Exhibit</p> <p>18 Tricon 32. And if you could go to the next page.</p> <p>19 Mr. Lockwood, is this information about</p> <p>20 the price of MX that you obtained from Platts?</p> <p>21 A. Yes, I did.</p> <p>22 Q. Tell us what Platts is.</p> <p>23 A. Platts is a recording agency that basically</p> <p>24 assesses the market price at the end of each day in</p> <p>25 whatever region they're covering. So at the end of each</p>
<p style="text-align: right;">75</p> <p>1 terms even on a long-term contract you don't have to</p> <p>2 sign it. It's just that people like the formality on a</p> <p>3 long-term contract of signing it, but on spot deals I</p> <p>4 rarely ever see those signed, ever.</p> <p>5 Q. Have you ever signed Tricon's terms and</p> <p>6 conditions of sales in a spot deal?</p> <p>7 A. When I've been asked to, I have.</p> <p>8 Q. Have you -- has that actually happened?</p> <p>9 A. Yes, it has.</p> <p>10 Q. What did you do in this transaction,</p> <p>11 Mr. Lockwood, after you sent Exhibit 5 to Mr. Wilson?</p> <p>12 A. It's standard practice for me, once I've</p> <p>13 agreed to all the material terms, to pass it to my</p> <p>14 operations specialist who then takes care of everything</p> <p>15 from Point A to Z afterwards.</p> <p>16 Q. Okay. And who is that operations specialist?</p> <p>17 A. At the time it was Mr. Vuk Rajevac.</p> <p>18 Q. And why do you turn the transaction over to</p> <p>19 the op specialist?</p> <p>20 A. It's a -- it's a matter of time and</p> <p>21 efficiency. It allows me to focus on making more deals</p> <p>22 while he takes care of what I've already done.</p> <p>23 Q. Does the operations specialist negotiate</p> <p>24 contract terms?</p> <p>25 A. Yes, he does.</p>	<p style="text-align: right;">77</p> <p>1 day, they'll look at either deals that were done and if</p> <p>2 there's no -- if there are no deals that are done, they</p> <p>3 assess the average of the bid and the offer for the day</p> <p>4 that day.</p> <p>5 Q. And, Mr. Lockwood, what does this chart tell</p> <p>6 you about what happened to the price of MX after</p> <p>7 July 22nd, 2008?</p> <p>8 A. A rapid decline in the price.</p> <p>9 Q. If you will take a look at the price that</p> <p>10 Platts reports on July 22.</p> <p>11 A. Yes.</p> <p>12 Q. And then take a look at the price on</p> <p>13 July 31st, 2008.</p> <p>14 A. Okay.</p> <p>15 Q. Can you tell me by how much the price had</p> <p>16 declined between July 22 and July 31st?</p> <p>17 A. Around a hundred dollars a metric ton.</p> <p>18 Q. That's about 7 percent?</p> <p>19 A. Yes, that's correct.</p> <p>20 Q. And then take a look at the price that Platts</p> <p>21 reports for September 15th, which was the last delivery</p> <p>22 date under the contract with Vinmar.</p> <p>23 A. Okay.</p> <p>24 Q. And can you tell me by how much that price had</p> <p>25 declined from July 22 to September 15th?</p>

20 (Pages 74 to 77)

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">78</p> <p>1 A. It looks like around \$360 a metric ton.</p> <p>2 Q. That's about 28 percent?</p> <p>3 A. I think roughly, yes.</p> <p>4 Q. And now take a look at the -- at the very end.</p> <p>5 I think the last day on this chart is the 16th of</p> <p>6 December.</p> <p>7 A. Yes.</p> <p>8 Q. Tell us what had happened to the price of MX</p> <p>9 by the 16th of December of 2008.</p> <p>10 A. It had just collapsed.</p> <p>11 Q. Okay. About a 62 percent decline?</p> <p>12 A. Yeah. It was a huge collapse.</p> <p>13 Q. From 1354 to 501?</p> <p>14 A. That's correct.</p> <p>15 Q. Does mixed -- does the price of mixed xylene</p> <p>16 tend to track the price of crude oil?</p> <p>17 A. Yes, it does.</p> <p>18 Q. What happened to the price of crude oil after</p> <p>19 July 22nd, 2008?</p> <p>20 A. At some point in July, the crude oil hit a</p> <p>21 record high of \$147 a barrel and it proceeded to drop</p> <p>22 all the way down into the 30's, \$30 a barrel.</p> <p>23 Q. Now, Mr. Lockwood, after you sold the MX to</p> <p>24 Vinmar on July 22nd, 2008, did Mr. Wilson approach you</p> <p>25 to sell it back to you?</p>	<p style="text-align: right;">80</p> <p>1 A. Brad, if you want to wipe the slate clean, we</p> <p>2 could do that. Otherwise, I have contract obligations</p> <p>3 I'll supply into.</p> <p>4 Q. And what is Mr. Wilson referring to?</p> <p>5 A. He's saying that he'll --</p> <p>6 MR. LEE: Calls for speculation.</p> <p>7 JUDGE BENTON: Why don't you rephrase your</p> <p>8 question?</p> <p>9 Q. (BY MR. DIAZ-ARRASTIA) Okay. Mr. Lockwood,</p> <p>10 at the time that you were having these instant messages</p> <p>11 with Mr. Wilson, what were you and he discussing?</p> <p>12 A. This instant message is actually Rick Wilson</p> <p>13 following up with me directly after we tried to conclude</p> <p>14 another deal through Ed Leyman.</p> <p>15 Q. Okay. And were you discussing the MX that he</p> <p>16 had bought from you on July 22nd?</p> <p>17 A. Yes, I was.</p> <p>18 Q. Okay. And what was your understanding of what</p> <p>19 Mr. Wilson said when he said "We could wipe the slate</p> <p>20 clean"?</p> <p>21 A. He was offering to sell the material back to</p> <p>22 me at the same price that he purchased, which was at</p> <p>23 1310 a metric ton.</p> <p>24 Q. And did you accept that?</p> <p>25 A. No way.</p>
<p style="text-align: right;">79</p> <p>1 A. Yes, he did.</p> <p>2 Q. Can we take a look at Joint Exhibit No. 15,</p> <p>3 please? And if we could go -- did I get that right?</p> <p>4 It looks like we have the wrong exhibit.</p> <p>5 Excuse me for a moment. Could we -- I'm sorry. It's</p> <p>6 Joint Exhibit No. 12, Mr. Lockwood.</p> <p>7 A. Okay.</p> <p>8 Q. Mr. Lockwood, Joint Exhibit 12 is -- at the</p> <p>9 top of Joint Exhibit 12 is an e-mail that you're sending</p> <p>10 yourself. Correct?</p> <p>11 A. That's correct.</p> <p>12 Q. But if you look down, there's some -- are</p> <p>13 those instant messages that we see?</p> <p>14 A. They are, yes.</p> <p>15 Q. Okay. And they are between you and</p> <p>16 Mr. Wilson?</p> <p>17 A. Yes.</p> <p>18 Q. And what is the date of those instant</p> <p>19 messages?</p> <p>20 A. July 31st, 2008.</p> <p>21 Q. Okay. And if you will go down at the instant</p> <p>22 message that Mr. Wilson sends you at 9:41 and 27 seconds</p> <p>23 into the morning.</p> <p>24 A. Okay.</p> <p>25 Q. And what does Mr. Wilson tell you?</p>	<p style="text-align: right;">81</p> <p>1 Q. And why not?</p> <p>2 A. The market had already fallen 450,000 or \$90 a</p> <p>3 metric ton at the time that he was talking to me.</p> <p>4 Q. And, sir -- if you'll go down to Joint</p> <p>5 Exhibit No. 14, sir. Did you later learn that</p> <p>6 Mr. Rajevac had sent this e-mail to Mr. Wilson on</p> <p>7 July 29th?</p> <p>8 A. Yes, I did.</p> <p>9 Q. I'm sorry. Mr. Rajevac had sent that e-mail</p> <p>10 to Mr. Pascu on July 29th?</p> <p>11 A. Yes.</p> <p>12 Q. And if we could look at No. 3, is this where</p> <p>13 Mr. Rajevac is telling Mr. Pascu that they may supply --</p> <p>14 that Tricon may supply an Asian origin cargo?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. And why does he say that an Asian</p> <p>17 origin cargo may have to be supplied?</p> <p>18 A. Well, he's saying that we guaranteed an</p> <p>19 arrival of September 1 through 15, so in case the vessel</p> <p>20 incurs any delays which would cause the estimated time</p> <p>21 of arrival to be outside of the 15th of September, which</p> <p>22 we guaranteed, then we would have to substitute it with</p> <p>23 an Asian origin cargo which would have a two to</p> <p>24 three-day delivery timing to be able to meet the</p> <p>25 guarantee that we gave.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">82</p> <p>1 Q. Okay. Mr. Brad Lockwood, how much -- let's</p> <p>2 look at the date of this e-mail. It's July 29th, 2008,</p> <p>3 about 5:00 in the afternoon.</p> <p>4 A. Okay.</p> <p>5 Q. Let's go back to Joint Exhibit 12. That</p> <p>6 interchange that you had with Mr. Wilson was on July the</p> <p>7 31st, 2008, in the morning?</p> <p>8 A. That's correct.</p> <p>9 Q. How much time had passed between Exhibit 14</p> <p>10 when Mr. Rajevac says, "We may need to substitute Asian</p> <p>11 origin" and the conversations that you are having with</p> <p>12 Mr. Wilson on July 31st?</p> <p>13 A. Around a day and a half.</p> <p>14 Q. In the course of these conversations, did</p> <p>15 Mr. Wilson ever tell you, "Hey, we can't take Asian</p> <p>16 origin MX"?</p> <p>17 A. Never mentioned it.</p> <p>18 Q. In fact, what he did say is, "Can I sell it</p> <p>19 back -- can I sell it back to you?"</p> <p>20 A. That's correct.</p> <p>21 Q. What happened after July 31st or let -- or</p> <p>22 what happened later on July 31st?</p> <p>23 A. After I would not agree to buy back the</p> <p>24 product at the same price that I sold it to them for, in</p> <p>25 the afternoon I was called by Ed Leyman to say that we</p>	<p style="text-align: right;">84</p> <p>1 MX being of your U.S. origin and MX having a United</p> <p>2 States loading port?</p> <p>3 A. Definitely there's a difference.</p> <p>4 Q. What is the difference between origin and</p> <p>5 loading port?</p> <p>6 A. Loading port is just exactly that. It's just</p> <p>7 the port that it was actually loaded from for export.</p> <p>8 Origin is actually where it was manufactured.</p> <p>9 Q. Is it possible for mixed xylene to be loaded</p> <p>10 in the U.S. Gulfport but not be of U.S. origin?</p> <p>11 A. Yes. Somebody could import material from a</p> <p>12 foreign country and store it in a bonded tank, therefore</p> <p>13 maintaining its foreign origin status. And when it's</p> <p>14 loaded from that port, it will still be known as the</p> <p>15 foreign origin status.</p> <p>16 Q. Okay. Now, after Mr. Wilson informed</p> <p>17 Mr. Rajevac and Mr. Leyman that he would not accept</p> <p>18 U.S. origin, did you try to negotiate a resolution with</p> <p>19 Vinmar?</p> <p>20 A. I tried, yes.</p> <p>21 Q. Take a look at Joint Exhibit No. 18, sir. I</p> <p>22 got on the wrong exhibit again. Here it is. I'm sorry.</p> <p>23 Excuse me.</p> <p>24 Now, Mr. Lockwood, did you -- is this a</p> <p>25 proposal for a resolution that was -- that you received</p>
<p style="text-align: right;">83</p> <p>1 have a problem.</p> <p>2 Q. Okay. Can we look at Joint Exhibit No. 15?</p> <p>3 You later learned that Mr. Rajevac received this e-mail</p> <p>4 from Mr. Wilson. Is that --</p> <p>5 A. That's correct.</p> <p>6 Q. And what's the date on that?</p> <p>7 A. July the 31st in the afternoon.</p> <p>8 Q. Okay. At 1:43 p.m.?</p> <p>9 A. Yes.</p> <p>10 Q. About how many hours after the IM exchange</p> <p>11 that you had had that morning?</p> <p>12 A. I'd say around four to five hours.</p> <p>13 Q. Okay. And Mr. Wilson says, "Vuk, we cannot</p> <p>14 accept open origin. It must be from the USA."</p> <p>15 A. That's correct. That's what he says.</p> <p>16 Q. Is this the first time that Tricon heard</p> <p>17 anything about the MX having to have U.S. origin?</p> <p>18 A. Yes, it was.</p> <p>19 Q. Mr. Lockwood, you told me earlier that when we</p> <p>20 talk about the origin of a product, if mixed xylene is</p> <p>21 of U.S. origin that means it was manufactured in the</p> <p>22 U.S.?</p> <p>23 A. That's correct.</p> <p>24 Q. Do you remember that?</p> <p>25 Is there a difference between referring to</p>	<p style="text-align: right;">85</p> <p>1 from Mr. Wilson?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And he dealt through Mr. Leyman. Correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And he is essentially saying, "I will do the</p> <p>6 deal that was negotiated on July 22 provided that you</p> <p>7 guarantee U.S. origin and guarantee first half of</p> <p>8 September delivery." Correct?</p> <p>9 A. But there is one noticeable change. He's</p> <p>10 asking for another seven days for him to be able to</p> <p>11 declare the discharge port.</p> <p>12 JUDGE DAVIDSON: To declare the what?</p> <p>13 THE WITNESS: The discharge port, whether</p> <p>14 or not they would like the product discharged in either</p> <p>15 Korea or Taiwan. He's asking for another seven days</p> <p>16 because contractually we had agreed to August 8th and</p> <p>17 he's asking for another seven days to declare where he</p> <p>18 wants the product discharged.</p> <p>19 Q. (BY MR. DIAZ-ARRASTIA) Okay. Did you accept</p> <p>20 this proposal?</p> <p>21 A. No, I did not.</p> <p>22 Q. Why did you not accept this proposal?</p> <p>23 A. It was clearly not a good faith proposal based</p> <p>24 on the fact that he was asking for another seven days to</p> <p>25 declare the discharge port. And if he's asking for USA</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">86</p> <p>1 product guaranteed in the first half with a 30 to 45-day</p> <p>2 transit time, there was a very high likely possibility</p> <p>3 that I would not be able to perform on this contract as</p> <p>4 he -- as he proposed.</p> <p>5 Q. If you will now look at Tricon Exhibit No. 16,</p> <p>6 Mr. Lockwood. Was this a proposal that you made to</p> <p>7 Mr. Wilson trying to come to resolution of the matter?</p> <p>8 A. Yes, it was.</p> <p>9 Q. And what did you propose?</p> <p>10 A. I tried to give him two options, hopefully --</p> <p>11 hoping that one of them he would choose. The first is</p> <p>12 that I was saying that I would be giving you a vessel</p> <p>13 that had U.S. origin. The ETA to Korea was September</p> <p>14 the 6th. The ETA to Taiwan was September 12-13th.</p> <p>15 So the estimated time of arrival was</p> <p>16 exactly within the window that he had requested of one</p> <p>17 through 15. And although I would not guarantee a first</p> <p>18 half September arrival, I was giving him something that</p> <p>19 had been estimated time of arrival during the window he</p> <p>20 wanted.</p> <p>21 JUDGE WOOD: What's this exhibit number</p> <p>22 again?</p> <p>23 MR. DIAZ-ARRASTIA: It is Tricon</p> <p>24 Exhibit --</p> <p>25 JUDGE DAVIDSON: 16.</p>	<p style="text-align: right;">88</p> <p>1 between the price at which we sold to Vinmar and the</p> <p>2 price obtained for the cargo in the open market."</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And that is what you had instructed</p> <p>5 Mr. Rajevac to say?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Okay. And if you will look in the first page</p> <p>8 of exhibit -- Joint Exhibit No. 21. Later on</p> <p>9 August 8th, did you also send an e-mail to</p> <p>10 Mr. Antonvich?</p> <p>11 A. Yes, I did.</p> <p>12 Q. And if you will look at where it says,</p> <p>13 "Therefore." "Therefore, Vinmar is in breach of</p> <p>14 contract and we reserve our right as a result of this</p> <p>15 breach."</p> <p>16 A. That's correct.</p> <p>17 Q. That's what you told Mr. Antonvich on July the</p> <p>18 8th --</p> <p>19 A. Yes.</p> <p>20 Q. -- at 5:13 p.m.?</p> <p>21 A. Yes.</p> <p>22 Q. I'm sorry. On August the 8th at 5:13 p.m.?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And did you also set -- tell</p> <p>25 Mr. Antonvich that you reserve your right to resell the</p>
<p style="text-align: right;">87</p> <p>1 MR. DIAZ-ARRASTIA: -- No. 16.</p> <p>2 Q. (BY MR. DIAZ-ARRASTIA) Did Mr. Wilson accept</p> <p>3 these proposals?</p> <p>4 A. No, he did not.</p> <p>5 Q. Did Vinmar declare a discharge port on August</p> <p>6 the 8th?</p> <p>7 A. No. They failed to do so.</p> <p>8 Q. What did you do then?</p> <p>9 A. I tried to find other buyers in the market.</p> <p>10 Q. Take a look at Joint Exhibit No. 21, beginning</p> <p>11 there and going on to the next page. And this is an</p> <p>12 e-mail that Mr. Rajevac sent to Mr. Wilson on August the</p> <p>13 8th at 3:42. Is that correct, sir?</p> <p>14 A. That's correct.</p> <p>15 Q. Did you instruct Mr. Rajevac to send this to</p> <p>16 Mr. Wilson?</p> <p>17 A. Yes, I did.</p> <p>18 MR. DIAZ-ARRASTIA: And, Tracy, if you</p> <p>19 could zoom in on the highlighted section.</p> <p>20 Q. (BY MR. DIAZ-ARRASTIA) And Mr. Rajevac says,</p> <p>21 "Furthermore, if your discharge port declaration is not</p> <p>22 given by 5:00 p.m. CST today, Vinmar will be in breach</p> <p>23 of the contract and we reserve the right to resell the</p> <p>24 cargo in the open market and will hold Vinmar liable for</p> <p>25 all damages, including but not limited to the difference</p>	<p style="text-align: right;">89</p> <p>1 cargo?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Mr. Lockwood, after Vinmar said that they</p> <p>4 would not perform the contract, did Tricon still hope</p> <p>5 that it would perform?</p> <p>6 A. Of course.</p> <p>7 Q. When was it that Tricon decided that Vinmar</p> <p>8 probably would not perform?</p> <p>9 A. I think it was most evident when we gave a</p> <p>10 vessel nomination showing that you had U.S. origin for a</p> <p>11 product that would be ETA arriving in the first half and</p> <p>12 they rejected it as a new proposal when all we were</p> <p>13 trying to do was to get a vessel nomination as per the</p> <p>14 contract.</p> <p>15 Q. And y'all notified Vinmar that you considered</p> <p>16 the contract null on August the 8th when the discharge</p> <p>17 port was not declared per the contract?</p> <p>18 A. That's correct.</p> <p>19 Q. Did you then try to find a replacement sale?</p> <p>20 A. I tried.</p> <p>21 Q. And what happened?</p> <p>22 A. It was impossible to find buyers with the</p> <p>23 market falling as fast as it was.</p> <p>24 Q. And does it sometimes happen that when the</p> <p>25 price is falling rapidly it's very difficult to</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">90</p> <p>1 impossible to find spot buyers?</p> <p>2 A. Sure.</p> <p>3 Q. Okay. Is that called the market freezes?</p> <p>4 A. Yes, because if -- from a buyer's point of</p> <p>5 view if I don't buy today and I wait until tomorrow most</p> <p>6 likely the price will continue to fall so why buy today</p> <p>7 what you can get cheaper tomorrow? So the buyers don't</p> <p>8 do anything.</p> <p>9 Q. Okay. Did you eventually select a replacement</p> <p>10 sale --</p> <p>11 A. Yes, I did.</p> <p>12 Q. -- for the Vinmar sale?</p> <p>13 And what was that sale?</p> <p>14 A. I exercised my option under my long-term</p> <p>15 contract with KP where I forced them to take a 5,000</p> <p>16 metric ton cargo because it was in my option.</p> <p>17 Q. Okay. You -- and to back up, you sold -- you</p> <p>18 selected a sale to KP Chemical --</p> <p>19 A. That's correct.</p> <p>20 Q. -- as the replacement sale?</p> <p>21 A. That's correct.</p> <p>22 Q. What is KP Chemical?</p> <p>23 A. KP Chemical is the largest mixed xylene buyer</p> <p>24 in the world. They're based in Korea with their main</p> <p>25 discharge in Ulsan.</p>	<p style="text-align: right;">92</p> <p>1 entered the contract again not realizing it had already</p> <p>2 been entered in the system in December of '07.</p> <p>3 Q. Was the KP contract in place during all of</p> <p>4 2008?</p> <p>5 A. Yes, it was.</p> <p>6 Q. And describe to me what the KP contract</p> <p>7 required.</p> <p>8 A. KP was basically given the option in their</p> <p>9 option to show up and load FOB from the U.S., meaning</p> <p>10 they have to load it, they have to pick it up themselves,</p> <p>11 but if the price did not make sense for them to load in</p> <p>12 the U.S. against a U.S. based price and add freight to</p> <p>13 then take it to their port in Asia, if it did not make</p> <p>14 financial sense, they would not exercise their right to</p> <p>15 load the product.</p> <p>16 However, I negotiated the option to have a</p> <p>17 couple CFR options in my option so that regardless of</p> <p>18 the fact that either KP did not want to load the cargo</p> <p>19 or if they wanted to load it FOB I could override them</p> <p>20 and force them to take the cargo on a CFR basis.</p> <p>21 Q. So under the KP contract, if you were -- if</p> <p>22 you were willing to sell on a CFR basis KP would be</p> <p>23 obligated to take MX every month of the year?</p> <p>24 A. No. I believe I was only given three or four</p> <p>25 options a year to be able to do a CFR.</p>
<p style="text-align: right;">91</p> <p>1 JUDGE WOOD: What exhibit number is that?</p> <p>2 MR. DIAZ-ARRASTIA: It is first -- Your</p> <p>3 Honor, we're going to show those now. It is Tricon</p> <p>4 Exhibit 4.</p> <p>5 JUDGE WOOD: The one that's up now?</p> <p>6 MR. DIAZ-ARRASTIA: That would be Joint</p> <p>7 Exhibit --</p> <p>8 MS. LARSON: 1.</p> <p>9 MR. DIAZ-ARRASTIA: -- 1.</p> <p>10 JUDGE WOOD: Thank you.</p> <p>11 MR. DIAZ-ARRASTIA: Is the one that is up</p> <p>12 now.</p> <p>13 Q. (BY MR. DIAZ-ARRASTIA) And, Mr. Lockwood,</p> <p>14 calling your attention to Joint Exhibit No. 1, is that a</p> <p>15 copy of the contract with KP Chemical Company?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Now, take also a look, Mr. Lockwood, at Tricon</p> <p>18 Exhibit 4 --</p> <p>19 A. Okay.</p> <p>20 Q. -- which also appears to be a copy of the KP</p> <p>21 contract, but this one is dated July the 20th, 2008,</p> <p>22 whereas Joint 1 is dated December 11th, 2007.</p> <p>23 A. That's correct.</p> <p>24 Q. Do you know why we have two of these?</p> <p>25 A. I believe somebody internally mistakenly</p>	<p style="text-align: right;">93</p> <p>1 Q. Did you have -- in July and September -- in</p> <p>2 July and August of 2008, was there an option available</p> <p>3 to be exercised?</p> <p>4 A. Yes, there was.</p> <p>5 Q. And did you exercise that option?</p> <p>6 A. I did, yes.</p> <p>7 Q. Okay. And the Vinmar sale was also a CFR sale</p> <p>8 to Asia. Correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Can you tell me when you selected the KP</p> <p>11 contract as the replacement contract?</p> <p>12 A. After Vinmar failed to declare the discharge</p> <p>13 port on August 8th, my option with KP, I exercised it</p> <p>14 either on August the 10th or the 11th. I'm not sure</p> <p>15 which.</p> <p>16 Q. If you will take a look at Joint Exhibit</p> <p>17 No. 22. And is that where you made your selection, sir?</p> <p>18 A. That's correct.</p> <p>19 Q. And that is dated August 11th, 2008, at</p> <p>20 3:02 a.m.?</p> <p>21 A. That's correct.</p> <p>22 Q. Why did you select the K -- the sale under the</p> <p>23 KP contract as the replacement sale?</p> <p>24 A. Based upon my contract with KP, it was the</p> <p>25 average price of September, which was the same time I</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">94</p> <p>1 was supposed to be delivering to Vinmar, so I knew that</p> <p>2 whatever the price was that I was selling to KP it would</p> <p>3 be a market-based price at the time of delivery to</p> <p>4 Vinmar.</p> <p>5 Q. Okay. And let's just go over a couple of</p> <p>6 things. Under the KP contract, you were selling mixed</p> <p>7 xylenes. Correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And they were going to be delivered in Asia?</p> <p>10 A. That's correct.</p> <p>11 Q. In Korea?</p> <p>12 A. In Korea.</p> <p>13 Q. And the quantity that they were required to</p> <p>14 take was 5,000 metric tons?</p> <p>15 A. That's correct.</p> <p>16 Q. The same as under the Vinmar contract?</p> <p>17 A. That's correct.</p> <p>18 Q. And, as you said, it was -- the price was the</p> <p>19 average Platts price in September?</p> <p>20 A. It was the September FOB Korea Platts average</p> <p>21 for the month of September.</p> <p>22 Q. Okay. And why did you think that made it a</p> <p>23 particularly suitable sale?</p> <p>24 A. With my delivery window being September 1</p> <p>25 through 15, I knew that the average price for the month</p>	<p style="text-align: right;">96</p> <p>1 A. Yes, we did.</p> <p>2 MR. LEE: I'm going to object to this</p> <p>3 question and the next -- where I think he's going. One</p> <p>4 of the -- one of the issues that the panel may recall,</p> <p>5 we asked for position sheet information about -- that</p> <p>6 would disclose Tricon's inventory.</p> <p>7 Mr. Lockwood, in his deposition, was</p> <p>8 unable to answer anything about what Tricon actually had</p> <p>9 in inventory and they refused to produce any</p> <p>10 documentation for their position sheets.</p> <p>11 And so I think it's un -- improper and --</p> <p>12 for him to testify now that he had other MX in avail --</p> <p>13 in availability to sell someplace else. They have</p> <p>14 refused to produce the documents. He testified in his</p> <p>15 deposition he was unable to answer those questions so we</p> <p>16 should stick with the record that we have.</p> <p>17 MR. DIAZ-ARRASTIA: Your Honor, this is</p> <p>18 not MX that they had in inventory.</p> <p>19 JUDGE BENTON: This is not a what?</p> <p>20 MR. DIAZ-ARRASTIA: This is not MX that</p> <p>21 they had in inventory. What I am referring to is</p> <p>22 delivery of MX that was made to KP in October of 2008.</p> <p>23 Documents about that were produced and Mr. Runions</p> <p>24 questioned Mr. Matthews about those documents in his</p> <p>25 deposition.</p>
<p style="text-align: right;">95</p> <p>1 would be included in that sales price to KP so that it</p> <p>2 would be a fair price.</p> <p>3 Q. Okay. Was there a difference in the MX</p> <p>4 specification between the KP contract and the Vinmar</p> <p>5 contract?</p> <p>6 A. They were very similar.</p> <p>7 Q. Okay. There was a slight difference?</p> <p>8 A. There was, yes.</p> <p>9 Q. Were they nonetheless very similar?</p> <p>10 A. They were.</p> <p>11 Q. Did that difference in the spec affect the</p> <p>12 price of the MX being sold to KP versus that being sold</p> <p>13 to Vinmar?</p> <p>14 A. No.</p> <p>15 Q. Can you tell me whether the MX that you used</p> <p>16 to supply the KP contract, did that ultimately meet the</p> <p>17 Vinmar spec?</p> <p>18 A. Yes, it did.</p> <p>19 Q. Was -- did Tricon make any other sales to</p> <p>20 Asia -- of mixed xylenes to Asia in the September to</p> <p>21 October 2008 timeframe?</p> <p>22 A. Make any sales at what time?</p> <p>23 Q. That means -- well, let me do it this way.</p> <p>24 Did Tricon deliver any other MX in Asia in the September</p> <p>25 to October timeframe?</p>	<p style="text-align: right;">97</p> <p>1 And I just wanted Mr. Lockwood to explain</p> <p>2 although that was delivered in October at a price of I</p> <p>3 think around 1320 per metric foot that was based on a</p> <p>4 contract that was made in July. And that's the only</p> <p>5 thing that I want to --</p> <p>6 MR. LEE: And I mis -- with that -- I</p> <p>7 misunderstood the question. I thought he was going</p> <p>8 someplace else. I have no problem with this line. I</p> <p>9 apologize.</p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) Okay. Mr. Lockwood,</p> <p>11 what my question to you just is, were there other MX</p> <p>12 deliveries that Tricon made to Asia in September to</p> <p>13 October 2008?</p> <p>14 A. Yes, there were.</p> <p>15 Q. Okay. And this was that October delivery that</p> <p>16 I just mentioned?</p> <p>17 A. We had two deliveries, one of which was</p> <p>18 done -- it was buy-sell agreement done prior to the</p> <p>19 Vinmar transaction and the other one was the one that</p> <p>20 you mentioned, yes.</p> <p>21 Q. Okay. Which was based on a contract that had</p> <p>22 been made in July at the price in July?</p> <p>23 A. That's correct.</p> <p>24 Q. Do you remember what date in July?</p> <p>25 A. I believe the buy-sell agreement was done on</p>

25 (Pages 94 to 97)

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">98</p> <p>1 July the 21st, the day before the Vinmar deal, and the 2 other deal that you're referring to was done on July the 3 23rd, the day after the Vinmar deal. 4 Q. Okay. And why would a buy-sell deal not be an 5 appropriate resell contract? 6 A. When you're buying and selling at the same 7 price, you're making a buy-sell agreement for logistics 8 reasons saying, "I give it to you now and you give it to 9 me later." 10 The price is arbitrary. You could choose 11 any price that you want. I can sell it to you for a 12 dollar a metric ton and you could sell it back to me for 13 a dollar a metric ton or you could sell it to me for a 14 million dollars a metric ton and I'll buy it back from 15 you. The market price is irrelevant to what price you 16 choose on a buy-sell. 17 Q. And you said you might do a buy-sell for 18 logistics reasons. What might be some of these 19 logistics reasons? 20 A. If the end user is really tight on inventory 21 and he's asking you to please let him borrow some now, 22 he'll give it back to you later in the future when it's 23 more convenient for him to do so. 24 Q. Might there also be a situation where you use 25 it just as a way to store material for a while?</p>	<p style="text-align: right;">100</p> <p>1 forced it upon me. 2 Q. And why did they make a request for a lower 3 volume? 4 A. KP had already had other deliveries scheduled 5 from me to them and it became obvious to everyone in the 6 market that every day the market would fall in price so 7 that because I was selling them at an average price the 8 average was always going to be higher than the next 9 day's price because in a trailing -- in a falling 10 market, the average is always going to be higher than 11 the next day's price. So they knew if they could force 12 me to reduce the volume that I owed them under the 13 contract they would have less exposure to the market 14 falling. 15 Q. Okay. Did KP want to buy any volume at all? 16 A. They begged me not to exercise the option. 17 Q. Okay. But they had a contractual obligation 18 to do it? 19 A. Yes, they did. 20 Q. Now, why did you agree to let them reduce 21 their volume? 22 A. I had had a contract with them since 2006 and 23 sometimes in subtle ways the consumer will say, "If you 24 don't agree to help us, then it may make it more 25 difficult to have a contract for next year." So based</p>
<p style="text-align: right;">99</p> <p>1 A. For sure. 2 Q. Does Vinmar own any storage capacity? 3 A. Does Vinmar -- 4 Q. I'm sorry. Does Tricon own any storage 5 capacity? 6 A. We do on other products, yes. 7 Q. But not on MX? 8 A. Not on MX. 9 Q. Now, we've talked about the price under the KP 10 contract was the average Platts price in September. 11 What would have happened to the price under the MX -- 12 under the KP contract if instead of continuing to go 13 down through September the price of MX had turned around 14 and started to go up? 15 A. As high as the price went, the damages would 16 go down. The higher the price would go, the lower the 17 damages would go. 18 Q. When the KP contract was selected, did you 19 know what was going to happen to the price of MX in 20 September? 21 A. If I did, I would already be retired. 22 Q. At what point, sir, did KP request a reduction 23 in the volume that was going to be sold under their 24 contract? 25 A. It wasn't really a request. They kind of</p>	<p style="text-align: right;">101</p> <p>1 on that, I took the subtle hint and agreed to reduce the 2 volume. 3 Q. Okay. And what did you reduce the volume to? 4 A. I reduced it to either 3200 or 3400 because we 5 had around 1600 metric tons or 1800 metric tons at that 6 buy-sell agreement where I had taken delivery -- I had 7 delivered in to them earlier and they were giving it 8 back to me -- or excuse me. 9 I had taken it earlier and then I was 10 giving it back to them at the price so that they were 11 taking the volume, which I believe was 16 or 1800 metric 12 tons at the high price and then adding that to the 32 or 13 the 3400 tons at the September price to come up with a 14 volume of 5,000 because they did not want me to deliver 15 64 or 68, you know. They wanted to reduce the overall 16 volume to 5,000 tons. 17 Q. Mr. Lockwood, even after you designated the KP 18 contract, did you continue to look for other possible 19 replacement mixed xylene sales in the spot market? 20 A. Sure. 21 Q. And what happened? 22 A. As you stated earlier, the market was frozen 23 and the buyers had just disappeared. 24 Q. Take a look at Joint Exhibit No. 26, 25 Mr. Lockwood.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">102</p> <p>1 A. Okay.</p> <p>2 Q. Tell us what that is.</p> <p>3 A. Is this the repudiation invoice?</p> <p>4 Q. Yes, sir.</p> <p>5 A. Okay. Basically what we had done is we took</p> <p>6 the volume of 5,000 metric tons, which we had the option</p> <p>7 to give them 5,000 tons plus or minus 5 percent. I took</p> <p>8 these September FOB Korea Platts average once that was</p> <p>9 finally calculated, which I believe came out to around</p> <p>10 \$995 a metric ton.</p> <p>11 I took the price that I sold Vinmar at</p> <p>12 1310. I subtracted the 995. I took that difference and</p> <p>13 multiplied it by the quantity.</p> <p>14 JUDGE BENTON: Mr. Diaz-Arrastia, I said</p> <p>15 we'd go until about noon before we took a break, but</p> <p>16 let's take a very short break now and then we'll come</p> <p>17 back. How much more do you have of this witness?</p> <p>18 MR. DIAZ-ARRASTIA: Not very much, Your</p> <p>19 Honor, if you --</p> <p>20 JUDGE WOOD: Let's give the witness five</p> <p>21 minutes.</p> <p>22 JUDGE BENTON: Let's take about a</p> <p>23 five-minute break and then we'll come back and finish.</p> <p>24 MR. DIAZ-ARRASTIA: That's fine.</p> <p>25 JUDGE BENTON: We're off the record.</p>	<p style="text-align: right;">104</p> <p>1 hearing time on it, but I just did want to point that</p> <p>2 out to the panel while we were on the subject.</p> <p>3 Q. (BY MR. DIAZ-ARRASTIA) Now, Mr. Lockwood,</p> <p>4 later in the hearing we're going to hear from Chuck</p> <p>5 Matthews regarding the calculation of Tricon's damages.</p> <p>6 But can you tell the panel who Mr. Matthews is?</p> <p>7 A. He is the controller of Tricon.</p> <p>8 Q. And did you ask him to calculate the amount</p> <p>9 of Tricon's damages in this case?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Did Mr. Matthews have any involvement in the</p> <p>12 transaction with Vinmar back in July, August,</p> <p>13 September 2008?</p> <p>14 A. No, he did not.</p> <p>15 Q. Were you the person who gave Mr. Matthews the</p> <p>16 information on the facts of the transaction that he</p> <p>17 needed to make his calculations?</p> <p>18 A. Yes, I was.</p> <p>19 Q. Now, Mr. Matthews, as we will see later, made</p> <p>20 his calculation based not on 5,000 metric tons but on</p> <p>21 5,250 metric tons. Were you the person who told him to</p> <p>22 do that?</p> <p>23 A. Yes, I was.</p> <p>24 Q. And why did you tell him to do that?</p> <p>25 A. Because when you have a sale and the plus or</p>
<p style="text-align: right;">103</p> <p>1 (Recess from 10:58 a.m. to 11:06 a.m.)</p> <p>2 JUDGE BENTON: Okay. We're back on the</p> <p>3 record. Let's proceed.</p> <p>4 Q. (BY MR. DIAZ-ARRASTIA) Okay. And,</p> <p>5 Mr. Lockwood, I guess my question is, is Joint</p> <p>6 Exhibit 66, is that a demand for payment on Vinmar?</p> <p>7 A. Yes, it is.</p> <p>8 Q. And what is the date on it?</p> <p>9 A. The date was October the 6th, 2008.</p> <p>10 Q. Has Vinmar paid?</p> <p>11 A. Not at all.</p> <p>12 Q. And has Tricon had to hire an attorney --</p> <p>13 A. Yes.</p> <p>14 Q. -- to pursue this matter?</p> <p>15 A. Yes, we have.</p> <p>16 MR. DIAZ-ARRASTIA: And I would also just</p> <p>17 like to point out to the panel that Tricon Exhibit 29 is</p> <p>18 a letter that I delivered to Mr. Lee. It's also a</p> <p>19 demand. And this is for purpose of satisfying the</p> <p>20 requirement of Chapter 38 with regard to attorneys'</p> <p>21 fees.</p> <p>22 And actually I don't recall if the parties</p> <p>23 have advised the panel, but the parties have reached an</p> <p>24 agreement that we will submit our attorneys' fee</p> <p>25 evidence in writing so that we don't have to take up</p>	<p style="text-align: right;">105</p> <p>1 minus 5 percent that's in the seller's option, when the</p> <p>2 market is in your favor you also always maximize to the</p> <p>3 highest drop to get the most value out of your sale.</p> <p>4 Q. And to sort of go back on that, the deal that</p> <p>5 was made with Vinmar was 5,000 metric tons plus or minus</p> <p>6 5 percent?</p> <p>7 A. In the seller's option, that's correct.</p> <p>8 Q. Okay. And the 250 is 5 percent of 5,000?</p> <p>9 A. That's correct.</p> <p>10 Q. Do you believe that it is appropriate to use</p> <p>11 5,250 metric tons as the correct amount to calculate</p> <p>12 damages?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And why is that?</p> <p>15 A. Since it was in our option, we have -- we have</p> <p>16 every right to be able to deliver as much as we can</p> <p>17 under the contract. And since we were making money</p> <p>18 against the sale, we wanted to maximize the sale.</p> <p>19 Q. The price of the material was going down?</p> <p>20 A. That's correct.</p> <p>21 Q. You had made a very good deal?</p> <p>22 A. That's correct.</p> <p>23 Q. And if you could maximize your material, you</p> <p>24 would make an even better deal?</p> <p>25 A. That's correct.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">106</p> <p>1 Q. And you had the option to do it?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Back in July, August, September of</p> <p>4 2008, could Tricon have easily found enough mixed xylene</p> <p>5 to supply both the KP sale and the Vinmar sale?</p> <p>6 A. Everyone in the world wanted to sell so it</p> <p>7 would be no problem to find it.</p> <p>8 MR. DIAZ-ARRASTIA: I pass the witness.</p> <p>9 JUDGE BENTON: Mr. Lee, cross-examination?</p> <p>10 MR. LEE: Thank you.</p> <p>11 CROSS-EXAMINATION (11:10 a.m.)</p> <p>12 BY MR. LEE:</p> <p>13 Q. Mr. Lockwood, let me start by asking, do you</p> <p>14 still have a bonus payment hinging on the outcome of</p> <p>15 this case?</p> <p>16 A. I do.</p> <p>17 Q. The alleged deal that was negotiated on</p> <p>18 July 22nd, 2008, just to be clear, you talked only to Ed</p> <p>19 Leyman. Correct?</p> <p>20 A. That's correct.</p> <p>21 Q. You did not speak directly to Rick Wilson on</p> <p>22 July 22nd, 2008?</p> <p>23 A. No, I did not.</p> <p>24 Q. And you didn't speak to Dr. Wilson at Vinmar</p> <p>25 anytime between July 22nd and August the -- let's say</p>	<p style="text-align: right;">108</p> <p>1 A. I was not on the phone with him, no.</p> <p>2 Q. Okay. And you don't know -- other than what</p> <p>3 Mr. Leyman has told you, you don't know what Dr. Wilson</p> <p>4 may have said to Ed Leyman. Correct?</p> <p>5 A. Only what Ed told me.</p> <p>6 Q. Is there one document in this case that you</p> <p>7 believe accurately reflects the agreement that</p> <p>8 Mr. Leyman was authorized to accept on behalf of Tricon?</p> <p>9 A. Can you re --</p> <p>10 MR. DIAZ-ARRASTIA: I object to the</p> <p>11 question to the extent it's asking, is there one</p> <p>12 document that contains the contract? Mr. Lockwood's not</p> <p>13 a lawyer and the law is that several documents</p> <p>14 constitute a contract.</p> <p>15 JUDGE BENTON: I'm going to let him ask</p> <p>16 the question.</p> <p>17 Q. (BY MR. LEE) Just to be clear, my question,</p> <p>18 Mr. Lockwood, is there one single document that you're</p> <p>19 aware of that you believe accurately reflects the</p> <p>20 agreement that you authorized Ed Leyman to accept on</p> <p>21 behalf of Tricon?</p> <p>22 A. Are you talking about only what I authorized</p> <p>23 Ed or the agreement in general?</p> <p>24 Q. I'm asking, is there a document that you are</p> <p>25 aware of that you claim contains the terms of the deal</p>
<p style="text-align: right;">107</p> <p>1 12th, 2008. Correct?</p> <p>2 A. That's not correct.</p> <p>3 Q. You did speak to him?</p> <p>4 A. Oh, through the Yahoo when he contacted me.</p> <p>5 Q. Okay. Other than the instant message exchange</p> <p>6 that you've testified about earlier today, you never</p> <p>7 spoke directly to Dr. Wilson between July 22nd, 2008,</p> <p>8 and August 12th, 2008. Correct?</p> <p>9 A. You mean like over the phone?</p> <p>10 Q. Yes, sir.</p> <p>11 A. No, I did not.</p> <p>12 Q. Okay. And the only exchange that you had with</p> <p>13 Dr. Wilson any -- at any point this time between</p> <p>14 July 22nd, 2008, and mid August of 2008 was either</p> <p>15 through this one instant message exchange on July 31th.</p> <p>16 Correct?</p> <p>17 A. Or e-mail.</p> <p>18 Q. Or an e-mail?</p> <p>19 A. That's correct.</p> <p>20 Q. All right. You weren't a party to any of the</p> <p>21 conversations between Mr. Leyman and Dr. Wilson.</p> <p>22 Correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And you don't know what Ed Leyman told</p> <p>25 Dr. Wilson on July the 22nd, 2008, do you?</p>	<p style="text-align: right;">109</p> <p>1 that you authorized Mr. Ed -- Mr. Leyman to accept on</p> <p>2 behalf of Tricon?</p> <p>3 A. I would say it would be the final confirmation</p> <p>4 for holdout.</p> <p>5 Q. And is that -- let's take a look at that. Is</p> <p>6 that Joint Exhibit No. 4?</p> <p>7 A. That's correct.</p> <p>8 Q. And it's your testimony that this Joint</p> <p>9 Exhibit 4 accurately reflects the agreement that you</p> <p>10 authorized Mr. Leyman to accept on Tricon's behalf?</p> <p>11 A. That's correct.</p> <p>12 Q. All the terms?</p> <p>13 A. All the terms that were important.</p> <p>14 Q. Well, did you agree that Mr. Leyman had the</p> <p>15 authority on behalf of Tricon to agree to all of the</p> <p>16 terms that are contained in Joint Exhibit No. 4?</p> <p>17 A. Yes, he did.</p> <p>18 Q. Okay. Everything that's written on this piece</p> <p>19 of paper. Correct, sir?</p> <p>20 A. That's correct.</p> <p>21 Q. Now, you do agree that when you use a broker</p> <p>22 the broker must match all of the essential terms of a</p> <p>23 firm bid with a firm offer before he can tell the</p> <p>24 parties they have a deal. Correct?</p> <p>25 A. Yes, he does.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">110</p> <p>1 Q. And if the firm bid and the firm offer don't 2 match up, then you don't have a deal, do you? 3 A. That's correct. 4 Q. And in this -- in the negotiations with 5 Mr. Leyman, you were the only person at Tricon who 6 negotiated that deal. Correct? 7 A. That's correct. 8 Q. And you did not guarantee U.S. origin mixed 9 xylenes to Vinmar. Is that right? 10 A. I guaranteed mixed xylenes, just not delivery 11 of U.S. origin in the first half of September. 12 Q. My question was, you did not guarantee 13 U.S. origin mixed xylenes to Vinmar. Correct? 14 A. I didn't hear you say the word U.S. origin 15 initially in the first question. So, no, I did not 16 guarantee U.S. origin. 17 Q. Okay. And you don't believe that U.S. origin 18 was a term of the deal with Vinmar. Correct? 19 A. Most definitely. 20 Q. Now, you -- obviously you know that Vinmar 21 claims that U.S. origin was a required term? 22 A. Nine days after the deal, yes. 23 Q. Okay. You don't agree with that, do you? 24 A. That's correct. 25 Q. If Vinmar had told Mr. Leyman on July 22nd,</p>	<p style="text-align: right;">112</p> <p>1 A. That's correct. 2 Q. But then it went to telephone conversations? 3 A. Correct. 4 Q. And when the deal that you claim was 5 consummated between Tricon and Vinmar, those 6 negotiations at that time were done entirely by phone 7 between you and Mr. Leyman. Correct? 8 A. Correct. 9 Q. And is it your understanding that Mr. Leyman 10 was also talking to Dr. Wilson by phone during that 11 period of time? 12 A. Definitely. 13 Q. Do you believe that a broker like Mr. Leyman, 14 that he has a responsibility to ensure that both sides 15 to the deal have a clear understanding of the agreed 16 upon terms? 17 A. Yes. That's why I use him. 18 Q. Okay. And if the broker knows that one party 19 has a different understanding of the terms, you would 20 agree with me that the broker ought to do something 21 about that. Right? 22 A. That's correct. 23 Q. Now, you say that product origin was not 24 discussed on July 22nd, 2008. I believe you testified 25 to that just a few minutes ago. Correct?</p>
<p style="text-align: right;">111</p> <p>1 2008, in its firm bid that U.S. origin was required, we 2 don't have a deal, do we? 3 A. He would have relayed that to me and then it 4 would have been my decision at that time to accept it or 5 not. 6 Q. If Vinmar had told Ed Leyman -- 7 A. That's correct. 8 Q. -- on July 22nd that U.S. origin was required, 9 we wouldn't have a deal, would we? 10 A. I can't answer that because I was never given 11 the option to choose whether or not to accept that as a 12 bid. 13 Q. Okay. But it's not -- it was not a firm offer 14 that you had made. Correct? You did not make a firm 15 offer to Mr. Leyman to supply U.S. origin MX? 16 A. I accepted Vinmar's firm bid is what I did. 17 Q. As you understood it when it was communicated 18 by Mr. Leyman to you? 19 A. That's correct. 20 Q. We don't have a record of that prior to it 21 being communicated to you, do we? 22 A. I do not, no. 23 Q. The negotiations or your conversations with 24 Mr. Leyman started on July 22nd through instant 25 messages. Correct?</p>	<p style="text-align: right;">113</p> <p>1 A. It was not discussed during the time of the 2 deal. I was asked the question after the deal was done, 3 What was the origin? And I said, Most likely U.S. but I 4 can't guarantee it because I'm already guaranteeing the 5 first half September window. And Ed went and talked to 6 Mr. Wilson and then he said, No problem. 7 Q. Okay. So hang on a second. Let's make -- 8 let's make sure we understand this. Is it -- it's your 9 testimony that U.S. origin did come up on July 22nd -- 10 A. No. 11 Q. -- 2008? 12 A. No. 13 Q. It did not? 14 A. No. 15 Q. Okay. So on July 22nd, 2008, when Mr. Leyman 16 was talking to you and Mr. Leyman was talking to 17 Dr. Wilson, it's your testimony that at no point in time 18 did U.S. origin come up in those discussions? 19 A. No. Like I said, after the deal was done I 20 was asked, What is the origin? It was not specified 21 U.S. It was just, What is the origin, as a question. 22 Q. Well, was that on July 22nd -- 23 A. Yes. 24 Q. -- 2008? 25 A. Yes, it was.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">114</p> <p>1 Q. Okay. What time did that come up?</p> <p>2 A. That was after the deal.</p> <p>3 Q. What time was the deal done --</p> <p>4 A. I don't remember.</p> <p>5 Q. -- according to you?</p> <p>6 A. I don't have the exact time.</p> <p>7 Q. Well, when you say it came up after the deal</p> <p>8 was done, what do you mean by that?</p> <p>9 A. When I accepted this firm bid and Rick -- Ed</p> <p>10 went back to close everything with Rick, saying that I</p> <p>11 had accepted his firm bid, he called me back and asked,</p> <p>12 What is the origin of the product?</p> <p>13 I said, "Most likely the U.S. but I can't</p> <p>14 guarantee it since I'm already guaranteeing the first</p> <p>15 half of September delivery window."</p> <p>16 He went and called Rick Wilson. Rick</p> <p>17 Wilson said, "Okay." And Ed came back and said, "Okay.</p> <p>18 Everything's done."</p> <p>19 Q. Okay. First of all, let's make something</p> <p>20 clear. You don't know what Dr. Wilson said to</p> <p>21 Mr. Leyman. Correct?</p> <p>22 A. That's correct.</p> <p>23 Q. You don't know what Mr. Leyman said to</p> <p>24 Dr. Wilson?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">116</p> <p>1 "Everything is all done."</p> <p>2 So it's semantics in the sense that I</p> <p>3 accepted the firm bid as it was presented to me. So in</p> <p>4 my mind, everything was done at that point. But when</p> <p>5 the question was raised to me, "What is the origin,"</p> <p>6 that's when I answered it like I've just told you. And</p> <p>7 then after him speaking to Rick Wilson he calls me back</p> <p>8 and said, "Everything is all done."</p> <p>9 Q. Is it possible that Mr. Leyman didn't</p> <p>10 communicate the terms of Vinmar's firm bid accurately to</p> <p>11 you?</p> <p>12 A. The odds are extremely low.</p> <p>13 Q. Is it possible?</p> <p>14 A. In theory, yes.</p> <p>15 Q. What you do know is that in the -- in the</p> <p>16 conversations around the time at which Mr. Leyman had</p> <p>17 said that you had a deal there was also a question about</p> <p>18 U.S. origin. Correct?</p> <p>19 A. No. As I stated, the answer is no to that</p> <p>20 question. I was asked, "What is the origin?" That's a</p> <p>21 big difference from saying, "Was it U.S. origin?" What</p> <p>22 is the origin is a different question.</p> <p>23 Q. And so did you understand that to be a</p> <p>24 question requesting a guarantee of U.S. origin?</p> <p>25 A. Not at all. It was more of an inquiry basis.</p>
<p style="text-align: right;">115</p> <p>1 Q. Okay. So it's your testimony that at some</p> <p>2 point in time on -- during the day on July 22nd, 2008,</p> <p>3 Mr. Leyman called you and said, You have a deal?</p> <p>4 A. That's correct.</p> <p>5 Q. And at that point in time, it is your belief</p> <p>6 that a contract existed between Vinmar and Tricon.</p> <p>7 Correct?</p> <p>8 A. Definitely.</p> <p>9 Q. And then after this discussion but at a time</p> <p>10 when you believe that Mr. Leyman went to Dr. Wilson and</p> <p>11 talked to him, Mr. Leyman came back to you and</p> <p>12 said, What is the origin of the product? Correct?</p> <p>13 A. Let me correct. It was before Ed had said,</p> <p>14 Everything is all done. He had asked me what the origin</p> <p>15 is. I had accepted the firm bid as it was presented to</p> <p>16 me.</p> <p>17 He said, "Okay. Let me call Rick and tell</p> <p>18 him everything is done."</p> <p>19 When he called Rick Wilson, he came back</p> <p>20 to me then with the question, "What is the origin of the</p> <p>21 product?" And I said, "Most likely U.S. Gulf, but I</p> <p>22 can't guarantee it since I'm already guaranteeing the</p> <p>23 first half window."</p> <p>24 And he probably said, "Okay." He went and</p> <p>25 called Rick Wilson and he calls me back and he said,</p>	<p style="text-align: right;">117</p> <p>1 What is the origin of the product? If I had guaranteed</p> <p>2 something or a guarantee was a part of the firm bid, he</p> <p>3 would never have asked the question.</p> <p>4 Q. Mr. Leyman would never have asked you that</p> <p>5 question?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. So let's -- okay. Let me ask you to</p> <p>8 take a look at Vinmar Exhibit 9, which is in the</p> <p>9 Vinmar -- you should have a notebook.</p> <p>10 Now, do you recognize Vinmar Exhibit 9 as</p> <p>11 instant message exchanges between you and Ed Leyman from</p> <p>12 July 22nd, 2008, through August 6th, 2008?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. And this is not a complete copy of all</p> <p>15 of the instant message communications that you had with</p> <p>16 Mr. Leyman concerning this alleged deal, is it?</p> <p>17 A. I gave everything I could find.</p> <p>18 Q. But you've seen that Mr. Leyman has additional</p> <p>19 instant messages --</p> <p>20 A. Yes.</p> <p>21 Q. -- that you didn't produce. Correct?</p> <p>22 A. That's correct.</p> <p>23 Q. All right. So this isn't a complete set; it's</p> <p>24 just what you had?</p> <p>25 A. That's correct.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">118</p> <p>1 Q. All right. Let me ask you to look at the page 2 labeled -- down at the right-hand corner of the Bates 3 label, it's TRI 48, which would also be Page 6 of the 4 document. 5 A. Okay. 6 Q. And about midway down the page, you'll see 7 there's a -- where it starts with August 6th, 2008? 8 A. Okay. 9 Q. Do you see that? 10 A. Yes. 11 Q. Okay. Now, this is at a point where by August 12 the 6th, 2008, you know that Vinmar has taken the 13 position that this alleged deal required Tricon to 14 supply U.S. origin MX. Correct? 15 A. That's correct. I'm sorry. I was reading 16 while I was listening to you. Can you repeat that 17 question? 18 Q. Sure. By August the 6th, 2008, you knew that 19 Vinmar claimed that the alleged deal required Tricon to 20 produce or supply -- 21 A. That's correct. 22 Q. -- U.S. origin MX? 23 A. That's correct. 24 Q. Okay. And on August the 6th, you're having a 25 series of communications with Mr. Leyman about that</p>	<p style="text-align: right;">120</p> <p>1 Q. Okay. 2 A. -- but not the meaning. 3 Q. And you knew as of August the 6th -- I mean, 4 certainly you knew prior to August 6th that Vinmar 5 needed U.S. origin? 6 A. That's correct. 7 Q. And you knew that on July the 22nd, 2008? 8 A. That's not correct. 9 Q. Okay. So just to be clear, your testimony is 10 that there, in fact, was no U.S. origin guarantee? 11 A. Definitely. 12 Q. And if Mr. Leyman didn't tell that to 13 Dr. Wilson, then Mr. Leyman didn't do his job, did he? 14 A. And he wouldn't be in business today. 15 Q. Now, you're the -- you're Tricon's 16 representative in this case. Correct? 17 A. Yes, I am. 18 Q. Okay. And it's your understanding that Tricon 19 claims that Vinmar breached a contract? 20 A. That's correct. 21 Q. And you're the person that's most familiar 22 with Tricon's claims in the case. Correct? 23 A. Definitely. 24 Q. Can you tell us from your understanding, sir, 25 what document or documents set forth the terms of the</p>
<p style="text-align: right;">119</p> <p>1 fact. Correct? 2 A. That's correct. 3 Q. And, now, at 2:39 on August the 6th, which is 4 about five or six lines down, you ask Mr. Leyman, The 5 first time he -- and that's Dr. Wilson. Correct? 6 A. Correct. 7 Q. The first time he raised this origin issue was 8 on July 29th, and you have a question mark. Correct? 9 A. That's correct. 10 Q. Okay. Were you asking him that, Mr. Leyman? 11 A. Yes. 12 Q. Okay. And then you go on to say, "Outside of 13 when he asked for it at the time of the deal and we did 14 not agree to give it to him." Do you see that? 15 A. Yes. 16 Q. Okay. So is it your testimony that Vinmar 17 specifically asked for in its firm bid U.S. origin and 18 you did not agree to that? 19 A. Absolutely not. 20 Q. Okay. Well, that's what that says. Right? 21 Outside of when he asked for it at the time of the deal 22 and we did not agree to give it to him? 23 A. That's not what I was saying. 24 Q. Well, does that -- did I read that correctly? 25 A. You read the words correctly --</p>	<p style="text-align: right;">121</p> <p>1 contract that Tricon bases its claim upon? 2 A. I'm not a lawyer to be able to know which 3 documents specifically to point to, but I know what the 4 terms were that were agreed to. 5 Q. Well, I mean, I'm just curious as to what your 6 belief is as to what is the contract? What's the 7 document or documents that set forth the claim that 8 Tricon is suing upon in this case? 9 A. I think if you'll look at our Tricon letter as 10 well as the MOAB confirmation, all the key terms match 11 up so you can choose whichever one you prefer. 12 Q. So it's either one? 13 A. The same. The key terms that were agreed to, 14 they both match up, so I don't know which one you would 15 prefer me to choose. 16 Q. Well, I'm asking you. I mean, you're Tricon's 17 representative and you're suing Vinmar for breach of 18 contract. 19 A. That's correct. 20 Q. What is the document -- what's the contract 21 that Tricon bases its claims on? 22 A. Since I'm not a lawyer, I can't tell you which 23 one is most accurate. I just know that the first page 24 with all the material terms on our letter match the MOAB 25 confirmation so in my mind there's no difference.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">122</p> <p>1 Q. What if there's a difference between the</p> <p>2 term -- one of these as you say essential terms in the</p> <p>3 MOAB letter and the Tricon letter? Which one controls?</p> <p>4 A. Again, I'm not a lawyer so I don't know.</p> <p>5 Q. What if there's a difference in the Tricon --</p> <p>6 in the terms that Tricon submitted to Vinmar after the</p> <p>7 MOAB confirmation came out? Is there still an agreement</p> <p>8 in your opinion?</p> <p>9 A. Definitely.</p> <p>10 Q. Okay. But you can't tell me which document</p> <p>11 would control in that situation?</p> <p>12 A. The material terms are the material terms.</p> <p>13 Anything we proposed afterwards was proposed for</p> <p>14 additional terms which Pascu agreed to. So, again, it's</p> <p>15 your call on which you want to use.</p> <p>16 Q. Well, but if there's a change in the</p> <p>17 material -- if there's a difference in the material</p> <p>18 terms between the confirmation and this sales letter</p> <p>19 that Tricon sent --</p> <p>20 A. Please show me -- please show me the</p> <p>21 difference in --</p> <p>22 Q. I'm just asking the question. Which document</p> <p>23 do you think this controls?</p> <p>24 A. There are no differences so it's a moot</p> <p>25 question.</p>	<p style="text-align: right;">124</p> <p>1 Q. Okay. And this purchase order that you've</p> <p>2 referred to, that was never sent to you. Correct?</p> <p>3 A. It was, but it was after the fact through</p> <p>4 legal matters.</p> <p>5 Q. Right. You got it -- you obtained it through</p> <p>6 discovery in this case?</p> <p>7 A. That's correct.</p> <p>8 Q. You -- Vinmar never sent that document to you?</p> <p>9 A. No. They promised they would, but they didn't</p> <p>10 come through on that promise.</p> <p>11 Q. Okay. Let's go through -- I want to ask you a</p> <p>12 couple of questions about the documentation if we can.</p> <p>13 I'll start with -- there may be -- I may jump around</p> <p>14 just a little bit. But if we take a look at Vinmar</p> <p>15 Exhibit No. 1.</p> <p>16 A. Okay.</p> <p>17 Q. Now, you recognize this exhibit as the -- as</p> <p>18 Mr. Leyman's handwritten confirmation on -- that he</p> <p>19 filled out on July 22nd, 2008. Correct?</p> <p>20 A. This is my first time to have ever seen one of</p> <p>21 these, but, yes, I know it's from Ed.</p> <p>22 JUDGE BENTON: Did you say Vinmar 1?</p> <p>23 MR. LEE: Yes, Your Honor.</p> <p>24 JUDGE BENTON: It has Chemicals on it?</p> <p>25 MR. LEE: Yes.</p>
<p style="text-align: right;">123</p> <p>1 Q. If there was, do you have an opinion on that?</p> <p>2 A. I'm not a lawyer so I don't have an opinion.</p> <p>3 Q. Now, you believe that an agreement was formed</p> <p>4 at the time that Mr. Leyman told you you're all done?</p> <p>5 A. That's correct.</p> <p>6 Q. And when Mr. Leyman told you that a deal had</p> <p>7 been concluded, there had been no discussion between</p> <p>8 Tricon and Vinmar about arbitrating a dispute. Correct?</p> <p>9 A. That is correct.</p> <p>10 Q. And, in fact, we can go through it, but I</p> <p>11 think you'll agree with me there's no agreement to</p> <p>12 arbitrate in any of the correspondence that you received</p> <p>13 from Ed Leyman. Correct?</p> <p>14 A. Only the one from Vinmar, not from MOAB.</p> <p>15 Q. You didn't receive a document from Vinmar?</p> <p>16 A. I'm saying receiving it after the fact through</p> <p>17 legal proceedings, seeing that they had the arbitration</p> <p>18 association clause in their purchase order, not --</p> <p>19 that's the only time I've seen it.</p> <p>20 Q. Okay. But that wasn't my question. My</p> <p>21 question was, the confirmation letters that you obtained</p> <p>22 from MOAB did not contain an agreement to arbitrate?</p> <p>23 A. No.</p> <p>24 Q. Correct?</p> <p>25 A. He never includes arbitration in his clauses.</p>	<p style="text-align: right;">125</p> <p>1 JUDGE BENTON: All right.</p> <p>2 THE WITNESS: The word MOAB I believe was</p> <p>3 cut off on the fax.</p> <p>4 JUDGE DAVIDSON: The first letter.</p> <p>5 THE WITNESS: Yeah.</p> <p>6 Q. (BY MR. LEE) Now, does this handwritten</p> <p>7 document, does that accurately reflect the agreement</p> <p>8 that you claim exists between Tricon and Vinmar?</p> <p>9 A. Not even close.</p> <p>10 Q. Why do you say that?</p> <p>11 A. The price is \$1 million too low.</p> <p>12 Q. Okay. Okay. Anything else?</p> <p>13 A. Yes.</p> <p>14 Q. What's that?</p> <p>15 A. I'm just saying it looks correct.</p> <p>16 Q. Okay. And just to be clear, the price, the</p> <p>17 1110, is not the price that you authorized Ed Leyman to</p> <p>18 accept on Tricon's behalf?</p> <p>19 A. Right. When I say 1 million, I'm using 1310</p> <p>20 minus 1110 is 200. 200 times 5,000 equals 1 million so</p> <p>21 it should be 1310.</p> <p>22 Q. Okay. So he made -- Mr. Leyman made a</p> <p>23 million-dollar mistake in his handwritten note.</p> <p>24 Correct?</p> <p>25 A. That's correct.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">126</p> <p>1 Q. Have you seen any other notes from Mr. Leyman 2 other than this one document?</p> <p>3 A. No.</p> <p>4 Q. Now, at the bottom of this exhibit, Vinmar 5 Exhibit No. 1, Mr. Leyman states that "As agreed, a 6 commission of USD .50 per metric ton shall be paid to 7 MOAB Oil, Inc., by both Tricon and Vinmar." Is that 8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Is that correct, that both Tricon and Vinmar 11 were obligated to pay MOAB a commission of basically 12 50 cents per metric ton?</p> <p>13 A. That's correct.</p> <p>14 Q. And, in fact, MOAB sent Tricon a commission 15 invoice for this alleged transaction, didn't it?</p> <p>16 A. That's correct.</p> <p>17 Q. And that's Vinmar Exhibit 15. Take a look at 18 that tab. Is that the commission invoice that MOAB sent 19 to Tricon?</p> <p>20 A. That's correct.</p> <p>21 Q. Now, you refused to pay MOAB's commission. 22 Correct?</p> <p>23 A. No, that's not correct. I said the moment 24 Vinmar performs we'll pay it.</p> <p>25 Q. So you refused to pay this commission</p>	<p style="text-align: right;">128</p> <p>1 something, you don't intend to pay Mr. Leyman. Correct?</p> <p>2 A. I guess that's correct.</p> <p>3 Q. Did you know Mr. Leyman did not send an 4 invoice to Tricon -- to Vinmar?</p> <p>5 A. That's news to me.</p> <p>6 Q. Does that surprise you?</p> <p>7 A. It could be a clerical error. I don't know.</p> <p>8 Q. You would have expected that he would have 9 sent an invoice to Vinmar if he believed that he had 10 done his job and concluded a deal between Vinmar and 11 Tricon. Right?</p> <p>12 A. I don't think Ed actually sends out invoices. 13 I'm sure he's got an accounting person to do that.</p> <p>14 Q. You would have expected somebody at MOAB to 15 have sent an invoice to Vinmar if Mr. Leyman had done 16 his job and put Vinmar and Tricon together in a deal?</p> <p>17 MR. DIAZ-ARRASTIA: I object that he 18 doesn't know what MOAB does.</p> <p>19 MR. LEE: I'm just asking for his 20 expectation.</p> <p>21 JUDGE BENTON: We're going to allow it. 22 Let's proceed.</p> <p>23 A. I expected him to send a confirmation, which 24 he told me he did. Beyond that, I don't have any idea.</p> <p>25 Q. (BY MR. LEE) Okay. Let's look then at Joint</p>
<p style="text-align: right;">127</p> <p>1 statement. Correct?</p> <p>2 A. No. I said we're postponing it until Vinmar 3 performs. There's a difference in refusing to pay 4 versus saying, "We'll pay once we get performance."</p> <p>5 Q. Okay. You haven't paid?</p> <p>6 A. That's correct.</p> <p>7 Q. And you don't intend to pay unless Vinmar is 8 ordered to perform on the contract?</p> <p>9 A. If Vinmar performs, I'll gladly pay it.</p> <p>10 Q. What do you mean by perform?</p> <p>11 A. If Vinmar was to have performed on the 12 contract. So in this case I guess if we win the 13 arbitration then I would be happy to pay his commission. 14 That would be in affect the same as Vinmar compensating 15 for their non-performance is what I imagine.</p> <p>16 Q. So it's your view that Mr. Leyman did not do 17 what he was authorized to do on your behalf?</p> <p>18 A. No. He did.</p> <p>19 Q. So he earned a commission?</p> <p>20 A. He did.</p> <p>21 Q. You just don't want to pay it unless Vinmar 22 performs?</p> <p>23 A. He brought the buyer and seller together, but 24 the seller -- the buyer ran away so --</p> <p>25 Q. Okay. And unless the buyer is ordered to do</p>	<p style="text-align: right;">129</p> <p>1 Exhibit 2.</p> <p>2 MR. LEE: And to everybody, I apologize 3 for jumping back and forth. I really did try not to do 4 that, but there's no easy way to do this so...</p> <p>5 Q. (BY MR. LEE) We've looked at Joint Exhibit 2 6 earlier today. Correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And this is the first confirmation letter that 9 Mr. Leyman sent out. Correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And if we look at the terms of this first 12 confirmation, does this document accurately set forth 13 the terms that you believe have been agreed to between 14 Vinmar and Tricon?</p> <p>15 A. Not at all.</p> <p>16 Q. What's wrong with it?</p> <p>17 A. The price is \$200 a metric ton shown too low.</p> <p>18 Q. So we have this price discrepancy. Correct?</p> <p>19 A. That's correct. Which I notified him 20 immediately after receiving this document.</p> <p>21 Q. Okay. Everything else do you agree with?</p> <p>22 A. Appears so.</p> <p>23 Q. And other than the price, is it your testimony 24 that Mr. Leyman had the authority on Tricon's behalf to 25 agree to the terms that are contained in Joint Exhibit</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">130</p> <p>1 No. 2?</p> <p>2 A. Yes.</p> <p>3 Q. Now, if we look at Joint Exhibit 3, this is</p> <p>4 the second confirmation letter sent by MOAB. Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And as we see, the price is still USD 1110.</p> <p>7 Correct?</p> <p>8 A. Which I pointed out immediately.</p> <p>9 Q. Okay. That's what the document says.</p> <p>10 Correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And that's not right?</p> <p>13 A. That's correct.</p> <p>14 Q. So this document, Joint Exhibit No. 3, does</p> <p>15 not contain the agreement that you believe exists</p> <p>16 between Vinmar and Tricon?</p> <p>17 A. That's correct.</p> <p>18 Q. Now, when did you point out to Mr. Leyman that</p> <p>19 his price term was incorrect?</p> <p>20 A. Within seconds of receiving both documents.</p> <p>21 Q. Did you ask him how he got the price wrong?</p> <p>22 A. No. He just apologized for the error.</p> <p>23 Q. So he had made a mistake. Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. It's certainly possible for Mr. Leyman, as</p>	<p style="text-align: right;">132</p> <p>1 Q. Sure. Every provision set forth in Joint</p> <p>2 Exhibit No. 4 is binding on Tricon. Correct?</p> <p>3 A. Anything I agree to is always binding. So as</p> <p>4 long as these are the terms that I agreed to, I'm always</p> <p>5 bound by them.</p> <p>6 Q. Did you agree to all of the terms contained in</p> <p>7 Joint Exhibit 4?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And did you intend to honor all of those terms</p> <p>10 on Tricon's behalf?</p> <p>11 A. I always honor my contracts, yes.</p> <p>12 Q. You were asked earlier today if you were aware</p> <p>13 of a situation where Tricon had a U.S. counterparty in a</p> <p>14 deal that you had done through the broker where you had</p> <p>15 had a dispute with a U.S. counterparty. Do you remember</p> <p>16 that testimony?</p> <p>17 A. That's correct.</p> <p>18 Q. You've had disputes with non-U.S.</p> <p>19 counterparties in broker deals. Correct?</p> <p>20 A. That's correct.</p> <p>21 JUDGE BENTON: Did you say "nine"?</p> <p>22 MR. LEE: Non-U.S. counterparties --</p> <p>23 JUDGE BENTON: Oh, non.</p> <p>24 MR. LEE: Yes.</p> <p>25 JUDGE BENTON: N-O-N?</p>
<p style="text-align: right;">131</p> <p>1 good as you say he is, to make mistakes. Correct?</p> <p>2 A. Anybody that types in a keyboard can hit a 1</p> <p>3 instead of a 3 at any point in time, so, yes, that's</p> <p>4 possible for anybody to make a mistake like that.</p> <p>5 Q. Well, the mistake wasn't a keyboard mistake,</p> <p>6 was it? I mean, you saw --</p> <p>7 A. It was --</p> <p>8 Q. -- in the handwritten confirmation it was</p> <p>9 actually Mr. Leyman's written mistake. Right?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. It's possible for somebody like</p> <p>12 Mr. Leyman, even if he's a good broker, to make</p> <p>13 mistakes?</p> <p>14 A. No one's perfect.</p> <p>15 Q. Now, let's look at Joint Exhibit 4. That</p> <p>16 would be the next document in the -- in your binder</p> <p>17 there now. Does this -- I think you've already told me</p> <p>18 that this document, Joint Exhibit 4, does, in fact,</p> <p>19 accurately set forth the agreement that you claim exists</p> <p>20 between Tricon and Vinmar?</p> <p>21 A. These have all the material terms that I</p> <p>22 agreed to, yes.</p> <p>23 Q. And you agree that every provision set forth</p> <p>24 in Joint Exhibit 4 is binding on Tricon. Correct?</p> <p>25 A. Can you repeat the question?</p>	<p style="text-align: right;">133</p> <p>1 MR. LEE: Yes.</p> <p>2 JUDGE BENTON: Okay.</p> <p>3 Q. (BY MR. LEE) Now, this final confirmation</p> <p>4 letter was not sent out until Wednesday, July the 23rd.</p> <p>5 Correct?</p> <p>6 A. I don't know if it was the afternoon of the</p> <p>7 22nd or early on the 23rd. I'm not sure.</p> <p>8 Q. Well, if we -- Joint Exhibit No. 4 at least</p> <p>9 indicates that it was sent to Rick Wilson on Wednesday,</p> <p>10 July 23rd, 2008?</p> <p>11 A. Right, at 8:23.</p> <p>12 Q. Okay. Are you aware of it going out before</p> <p>13 that?</p> <p>14 A. I don't know when it was sent to me. I don't</p> <p>15 know.</p> <p>16 Q. And after you received Joint Exhibit No. 4,</p> <p>17 which as you said finally had all of the terms that you</p> <p>18 agreed to on Tricon's behalf, you then prepared a sales</p> <p>19 contract. Correct?</p> <p>20 A. I believe we prepared it prior to even</p> <p>21 receiving this amended confirmation.</p> <p>22 Q. You didn't send it to Vinmar until after you</p> <p>23 had received the amended confirmations. Correct?</p> <p>24 A. Yeah, it appears so. You're correct.</p> <p>25 Q. Okay. And earlier -- let's take a look at, if</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">134</p> <p>1 we could, Joint Exhibit No. 5. Now, you talked about</p> <p>2 this document earlier today and I think you referred to</p> <p>3 it as a sales letter. But isn't this a sales contract?</p> <p>4 A. That's the word that I used here in this</p> <p>5 e-mail.</p> <p>6 Q. Okay. I'm just -- okay. So you prepared the</p> <p>7 sales contract because that's something that is in</p> <p>8 keeping with Tricon's standard practice. Correct?</p> <p>9 A. It's standard industry practice, not just for</p> <p>10 Tricon.</p> <p>11 Q. But it's Tricon's standard practice. Correct?</p> <p>12 A. We are a participant in the industry so, yes,</p> <p>13 we go by industry standards.</p> <p>14 Q. But I just asked you about your standards.</p> <p>15 Okay?</p> <p>16 A. Okay.</p> <p>17 Q. You're not here testifying on behalf of</p> <p>18 anybody else, are you?</p> <p>19 A. No, sir.</p> <p>20 Q. You're Tricon's representative?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. So let me ask you about Tricon's</p> <p>23 standard practice.</p> <p>24 A. Okay.</p> <p>25 Q. It was Tricon's standard practice to prepare a</p>	<p style="text-align: right;">136</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. But my original question was, Tricon's</p> <p>3 procedures require a sales contract. Correct?</p> <p>4 A. We're supposed to pass paper to the other</p> <p>5 side, that's correct.</p> <p>6 Q. And the paper that you passed was a sales</p> <p>7 contract in this case?</p> <p>8 A. It's here in Vinmar No. 5.</p> <p>9 Q. And, you know, in fact, Mr. Leyman knew that</p> <p>10 you would be sending a sales contract as well, didn't</p> <p>11 he?</p> <p>12 A. It's standard industry practice, yes.</p> <p>13 Q. You didn't intend to conclude a deal with</p> <p>14 Vinmar until your sales contract was in place and</p> <p>15 signed. Correct?</p> <p>16 A. That's definitely incorrect.</p> <p>17 Q. Okay. You prepared the sales contract?</p> <p>18 A. I believe in this case -- I'm not sure if I</p> <p>19 did or Vuk did.</p> <p>20 Q. I believe that you testified that you prepared</p> <p>21 it.</p> <p>22 A. I don't remember, but --</p> <p>23 Q. It wouldn't surprise you if you did?</p> <p>24 A. Not at all.</p> <p>25 Q. You included a signature blank for yourself.</p>
<p style="text-align: right;">135</p> <p>1 sales contract. Correct?</p> <p>2 A. We pass sales letters to companies, yes.</p> <p>3 Q. This is passed as a sales contract?</p> <p>4 A. Or an e-mail. Yes.</p> <p>5 Q. Is there a difference between a contract and a</p> <p>6 letter to you?</p> <p>7 A. I'm not a lawyer so I don't know the answer to</p> <p>8 that.</p> <p>9 Q. Well, I'm just curious. You keep referring to</p> <p>10 a letter. Your e-mail said contract. Are you trying to</p> <p>11 make a distinction between the two?</p> <p>12 A. I'm not trying to make any distinctions, no.</p> <p>13 Q. Tricon's procedures, in fact, require a sales</p> <p>14 contract. Correct?</p> <p>15 A. On any deal that you do with a counterparty,</p> <p>16 you should pass some paper to the other side on either a</p> <p>17 purchase or a sale, but whether you do so you still have</p> <p>18 a deal.</p> <p>19 Q. And the deal is as set forth in that</p> <p>20 confirmation. Correct?</p> <p>21 A. If you and I were to do a deal on a napkin</p> <p>22 right now, we would have a deal.</p> <p>23 Q. Okay. My question was, the deal would be the</p> <p>24 deal as it's set forth in the confirmation, correct, in</p> <p>25 this case?</p>	<p style="text-align: right;">137</p> <p>1 Correct?</p> <p>2 A. That's what's printed from our system.</p> <p>3 Q. And it's got your name on it? If we turn to</p> <p>4 Joint Exhibit 5, the last page, it's got -- you filled</p> <p>5 in the date, July 22nd, 2008, didn't you?</p> <p>6 A. The system generated that date, yes.</p> <p>7 Q. And then put your name, Brad Lockwood. Right?</p> <p>8 A. Again, generated by the system, yes.</p> <p>9 Q. And your signature blank?</p> <p>10 A. That's correct.</p> <p>11 Q. Which you didn't sign. Correct?</p> <p>12 A. That's correct.</p> <p>13 Q. You never signed this sales contract.</p> <p>14 Correct?</p> <p>15 A. That's correct.</p> <p>16 Q. It also had a spot for Rick Wilson at Vinmar</p> <p>17 to sign. Correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And he didn't -- he's never signed it, has he?</p> <p>20 A. That's correct.</p> <p>21 Q. Now, I just want to be clear. I want to make</p> <p>22 sure I understand what your testimony is, Mr. Lockwood,</p> <p>23 about this document and the MOAB confirmation because</p> <p>24 you had -- you are Tricon's representative in this case.</p> <p>25 What document contains the contract that</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">138</p> <p>1 Tricon sues upon in this case?</p> <p>2 A. I believe, again, like I said earlier, if you</p> <p>3 look at the Tricon letter and MOAB confirmation, the key</p> <p>4 points of product, quantity, quality, price, Incoterms,</p> <p>5 delivery period and payment terms all match, which are</p> <p>6 the material terms of any deal.</p> <p>7 So when we have the letter here having</p> <p>8 additional terms, that's why Mr. Rajevac asked for Pascu</p> <p>9 to agree to all those terms, which he later did. So the</p> <p>10 material terms are here shown on the first page and the</p> <p>11 additional terms are what Mr. Pascu agreed to later.</p> <p>12 MR. LEE: I'll object. Nonresponsive.</p> <p>13 Q. (BY MR. LEE) My question is, what document --</p> <p>14 MR. LEE: I object to the question -- the</p> <p>15 answer as nonresponsive and ask that it be stricken.</p> <p>16 JUDGE BENTON: It's overruled.</p> <p>17 Q. (BY MR. LEE) What document contains the</p> <p>18 contract that Tricon bases its claim on?</p> <p>19 A. Again, I'm not a lawyer so all I can say is</p> <p>20 that anything that lists the product, quantity, quality,</p> <p>21 price, Incoterm, delivery period and payment terms,</p> <p>22 that's what the contract is. So if Ed had been at a</p> <p>23 restaurant writing my firm offer or Rick Wilson's firm</p> <p>24 bid on a napkin and walking it over to my table and me</p> <p>25 accepting it on a napkin, it wouldn't matter what kind</p>	<p style="text-align: right;">140</p> <p>1 so let's proceed.</p> <p>2 MR. LEE: Thank you.</p> <p>3 Q. (BY MR. LEE) And if you don't know the</p> <p>4 answer -- I mean, the question is --</p> <p>5 A. I'm not sure.</p> <p>6 Q. -- do you have -- I mean, do you know what</p> <p>7 document that you as Tricon's representative are asking</p> <p>8 the panel to enforce in this case?</p> <p>9 A. I'm not an expert on damages or a lawyer so I</p> <p>10 don't know the answer to that question.</p> <p>11 Q. Why did you include a signature blank for</p> <p>12 yourself?</p> <p>13 A. That's generated by our system for any deal</p> <p>14 that's done so it's automatically generated, whether or</p> <p>15 not I planned to sign it or not.</p> <p>16 Q. So it's just something that's automatically</p> <p>17 generated?</p> <p>18 A. That's correct.</p> <p>19 Q. And you chose not to sign it in this case?</p> <p>20 A. That's correct.</p> <p>21 Q. The reason you didn't sign it is so that you</p> <p>22 could later claim that there was no agreement if the</p> <p>23 price went against you. Isn't that right?</p> <p>24 A. That's absolutely false.</p> <p>25 Q. Why have the signature blank for Brad Lockwood</p>
<p style="text-align: right;">139</p> <p>1 of piece of paper it's on. As long as the material</p> <p>2 terms are shown, that's the -- that's the deal. And,</p> <p>3 again, when you're saying which one, I'm not a lawyer so</p> <p>4 I don't know which one to point to. I just know that</p> <p>5 the material terms on our letter match the confirmation.</p> <p>6 Q. Well, but you -- you've asked the panel to</p> <p>7 award Tricon money on a contract. Correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And is it -- you can't tell the panel which</p> <p>10 document you're asking them to enforce?</p> <p>11 A. Well, the beautiful thing is that Pascu</p> <p>12 accepted all of our additional terms so really it's a</p> <p>13 moot point in my opinion.</p> <p>14 Q. So is it -- is it your testimony that the</p> <p>15 document that Tricon seeks to enforce in this case is</p> <p>16 this sales contract, Joint Exhibit 5, that you sent to</p> <p>17 Vinmar?</p> <p>18 A. You'd have to direct that question to a</p> <p>19 lawyer. I'm not a lawyer so...</p> <p>20 Q. Well, do you know?</p> <p>21 MR. DIAZ-ARRASTIA: Your Honor, this</p> <p>22 question has been asked five times. I think</p> <p>23 Mr. Lockwood has given the same answer every time.</p> <p>24 JUDGE BENTON: That is -- that is a fair</p> <p>25 observation, but I'm going to give Mr. Lee some leeway</p>	<p style="text-align: right;">141</p> <p>1 on a sales contract unless you intended to sign it?</p> <p>2 A. As I testified earlier, when asked by other</p> <p>3 counterparties on spot deals to sign deals, if it's</p> <p>4 really important to them, then I've signed it, but</p> <p>5 otherwise there's no point in signing it if it's not</p> <p>6 necessary from the other person's side.</p> <p>7 Q. Okay. What if there are inconsistencies</p> <p>8 between the confirmation from MOAB, Joint Exhibit No. 4,</p> <p>9 and the sales contract that you sent on July 23rd, which</p> <p>10 is Joint Exhibit 5?</p> <p>11 A. Please show me the inconsistencies.</p> <p>12 Q. I just said if there -- if there are any</p> <p>13 inconsistencies or inconsistent terms, do you know how</p> <p>14 that would be interpreted in this case?</p> <p>15 A. I guess you would have to show me what you're</p> <p>16 referring to.</p> <p>17 Q. Okay. Is it your testimony that there are no</p> <p>18 terms that are inconsistent between the sales contract</p> <p>19 and the MOAB sales confirmation?</p> <p>20 A. Can you repeat the question or rephrase the</p> <p>21 question?</p> <p>22 Q. Sure. Is it your testimony that there are no</p> <p>23 inconsistent provisions between the MOAB letter and the</p> <p>24 sales contract you sent?</p> <p>25 A. If you look at the product, the quantity, the</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">142</p> <p>1 quality, the price, the Incoterm, the delivery period 2 and the payment terms, they all match. So if you're 3 wanting to point out something else, you'll have to be 4 more specific or show me what you're referring to. 5 Q. Well, I mean, I think my question was a little 6 broader than that. I just said are you -- do you think 7 there are any inconsistent provisions between the MOAB 8 letter and the sales contract? 9 A. And your broad question was asked to be more 10 specific so you'd have to show me what you're referring 11 to. 12 Q. So you can't answer that question? 13 A. I can't answer that broad a question, no. 14 Q. Okay. Well, let's take a look then at -- 15 let's look at both of them. Okay? 16 A. Okay. 17 Q. Joint Exhibit 4 is the MOAB letter. Right? 18 And -- correct? 19 A. That's correct. 20 Q. Now, MOAB's confirmation under quantity says, 21 "5,000 metric tons plus or minus 5 percent, seller's 22 option." Do you see that? 23 A. That's correct. 24 Q. That means, as you've testified earlier, that 25 Tricon in this case would have the option to increase</p>	<p style="text-align: right;">144</p> <p>1 to the vessel. So from the buyer's perspective, there 2 is no difference. They're not in control of the plus or 3 minus 5 percent. 4 Q. That wasn't my question. My question is, 5 there is a difference between seller's option and 6 vessel's option. Correct? 7 A. Right. And since I would be chartering the 8 vessel, there would be no difference. 9 JUDGE BENTON: I think the panel 10 understands each of you. Let's -- 11 Q. (BY MR. LEE) Now, let's take a look at the 12 title and risk provision on the MOAB confirmation. Now, 13 that says, "Title and risk to pass from seller to buyer 14 as the product passes the barge/vessel's flange at load 15 port." Do you see that? 16 A. That's correct. 17 Q. Okay. Now, in your sales contract, if we 18 looked at Page 2, what you -- what you put under 19 Paragraph 7, it says, "Transfer title and risk. 20 Transfer title of the product will pass from seller to 21 buyer upon payment in full of the total price and 22 then -- and interest, if any." Right? 23 A. That's correct. 24 Q. Okay. So not until Vinmar pays for it will 25 they get title under this document. Correct?</p>
<p style="text-align: right;">143</p> <p>1 the quantity or reduce the quantity as it sees fit 2 within that 5 percent leeway. Correct? 3 A. That's correct. 4 Q. All right. Now, if we look at Exhibit 5, 5 which is the document you prepared, under the quantity 6 that says, "5,000 metric tons plus or minus 5 percent, 7 vessel's option," does it not? 8 A. That's correct. 9 Q. So in that case, it would be the ship owner 10 who is shipping the product who would decide whether the 11 quantity loaded would be 5,000 or whether it would be 12 plus or minus 5 percent. Correct? 13 A. That's incorrect. 14 Q. Isn't that what that says? 15 A. It says, "the vessel's option," but I had to 16 charter a vessel on a CFR so I would never fix the 17 vessel giving that option to the vessel. 18 Q. But my question on the document itself is, 19 this says, "vessel's option." Correct? 20 A. It says that, yes. 21 Q. And that's different than seller's option. 22 Correct? 23 A. In the case that I am the seller, what matters 24 is that I am the one that's going to be chartering the 25 vessel and I have the option whether or not to give it</p>	<p style="text-align: right;">145</p> <p>1 A. That's the proposal for additional terms. 2 Q. Okay. Well, that's different than what 3 Mr. Leyman had put in his confirmation. Correct? 4 A. And that's why we proposed it as an additional 5 term. 6 Q. Okay. So -- and that's an inconsistency 7 between the two documents, is it not? 8 A. It's a difference on the proposal for the 9 additional term, yes. 10 Q. That's a different term of the deal. Correct? 11 A. It's a proposal for an additional term. 12 JUDGE DAVIDSON: Can I ask a question? 13 MR. LEE: Sure. 14 JUDGE DAVIDSON: Under -- do you mind? 15 It's right on this. 16 MR. LEE: Absolutely. 17 JUDGE DAVIDSON: On Paragraph 7 of 18 Exhibit 5, there seems -- there are two different 19 risk -- transfer of risk provisions. There's that first 20 sentence and then there's that second paragraph with the 21 A and B. You see where I'm going? 22 MR. LEE: Yes. 23 JUDGE DAVIDSON: And I don't understand in 24 the trade the difference between those two separate 25 provisions. I mean, I can read them. I just -- it</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">146</p> <p>1 seems to be two different provisions for transfer of 2 risk. If somebody could -- 3 JUDGE BENTON: Let the witness -- let the 4 witness explain it. 5 JUDGE DAVIDSON: -- explain it. 6 THE WITNESS: Okay. Sure. If the look at 7 the MOAB confirmation, it says, "Title and risk to pass 8 from seller to buyer as the product passes the 9 barge/vessel's flange at load port." What that means is 10 that I'm loading the vessel for Vinmar because I've 11 agreed to pay the freight to move it to Asia. That's 12 what CFR means. 13 So I'm going to pull the vessel up to 14 let's say hypothetically Exxon's dock to load. The 15 moment I start to pump that product onto the vessel, the 16 moment it's crossed over the vessel's railing onto the 17 vessel, it's Vinmar's product, but I'm still obligated 18 to move it for him to the discharge port. I'm paying 19 the freight, but they have the title on the risk of the 20 product once it's on board the vessel. 21 So, for example, if the vessel was to sink 22 when it's out on the way -- on the way to Asia, Vinmar 23 would have to be the one claiming the damages to their 24 insurance company because they owned the product once it 25 was on the vessel.</p>	<p style="text-align: right;">148</p> <p>1 JUDGE DAVIDSON: Yeah. 2 JUDGE BENTON: Mr. Lee, is this a good 3 time? I know -- 4 MR. LEE: Sure. 5 JUDGE BENTON: 1:00 -- 6 JUDGE DAVIDSON: 1:00 o'clock? 7 JUDGE BENTON: Okay. 1:00 o'clock work or 8 do you need more time? 9 MR. DIAZ-ARRASTIA: 1:00 o'clock is fine. 10 JUDGE BENTON: Very good. We're off the 11 record. 12 (Recess from 11:59 a.m. to 1:01 p.m.) 13 JUDGE BENTON: Okay. We're back on the 14 record. 15 Do you-all have an agreement on the 16 exhibits coming into evidence save and except for those 17 that you specifically object to or is there an agreement 18 only on the joint exhibits? 19 MR. LEE: I think from my perspective 20 certainly the joint exhibits we've agreed to. On the 21 individual exhibits, there are a few that I have an 22 objection to. I think I've raised a couple of those. 23 I think the bigger issue with the 24 individual exhibits is there's some duplication that 25 we've noticed over the weekend. I think we probably</p>
<p style="text-align: right;">147</p> <p>1 JUDGE DAVIDSON: Okay. I just picked it 2 up. There's a distinction between transfer of title and 3 transfer of risk. That's the key. I didn't -- 4 THE WITNESS: Right. 5 JUDGE DAVIDSON: I didn't pick up the 6 distinction between them. 7 THE WITNESS: On the CFR, it says, "Risk 8 of damage to or loss of product shall pass from seller 9 to buyer at the flange connection between the loading 10 hose." 11 JUDGE DAVIDSON: But there's two different 12 transfer types in this -- on this -- in Exhibit 5. The 13 first is for transfer of title and the second is for 14 transfer of risk and they would appear to be at two 15 different times. 16 THE WITNESS: Right. And that's just our 17 proposal. It's standard for additional terms, just 18 passing that as a proposal. 19 JUDGE DAVIDSON: Okay. 20 THE WITNESS: So I guess you would say the 21 risk matches with MOAB. They're just -- the title 22 proposal is different than MOAB's. 23 JUDGE DAVIDSON: Got it. 24 THE WITNESS: That's probably clarifying 25 what you're saying.</p>	<p style="text-align: right;">149</p> <p>1 want to pull some of that out when it's over, but -- 2 MR. DIAZ-ARRASTIA: There -- I know 3 there's at least one of the Vinmar exhibits that -- we 4 have an objection in this sense. I think in an 5 arbitration the panel will see the evidence and will 6 give it the proper weight. 7 JUDGE DAVIDSON: The question is, do 8 you-all need to make a formal tender or offer of 9 documents in order for it to be -- 10 MR. DIAZ-ARRASTIA: I would. 11 JUDGE DAVIDSON: -- before us because 12 nobody -- you've been using exhibits as if they were 13 already in evidence. We can assume that -- y'all can 14 keep doing that and we'll -- 15 MR. DIAZ-ARRASTIA: Yeah. I -- 16 JUDGE DAVIDSON: -- and we'll consider 17 them or not. 18 MR. DIAZ-ARRASTIA: I have thought that's 19 what would be done. There is one -- two documents, and 20 I don't know if Mr. Lee tends to present them or not, 21 where if he does I would just like to point out what I 22 think are some shortcomings in the documents if he does. 23 I don't know that he will. But I -- it -- 24 I don't -- I was not contemplating that we would be 25 sifting through the exhibits and hear objections on</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">150</p> <p>1 them.</p> <p>2 JUDGE DAVIDSON: Okay.</p> <p>3 JUDGE WOOD: I think our concern is just</p> <p>4 so that you know that if y'all reference a document</p> <p>5 we're going to read the document. Okay.</p> <p>6 MR. LEE: Correct. And I think that's --</p> <p>7 I guess the joint exhibits, I certainly think they</p> <p>8 should be admitted. I guess the only thing I would say</p> <p>9 about the -- each individual set of exhibits is if</p> <p>10 they're not used during the arbitration then they</p> <p>11 probably shouldn't come in, but to the extent they're</p> <p>12 used and there's no objection they ought to -- I mean, I</p> <p>13 don't --</p> <p>14 JUDGE WOOD: So maybe we can at the end</p> <p>15 reconcile everybody's list.</p> <p>16 JUDGE BENTON: That's what I was going to</p> <p>17 do.</p> <p>18 MR. DIAZ-ARRASTIA: That would be fine.</p> <p>19 JUDGE BENTON: Okay. Let's see. We'll</p> <p>20 try to go until about 2:30 before we take a break, but</p> <p>21 if any one of you needs a break before that time, just</p> <p>22 let us know.</p> <p>23 And anything else, Judge Davidson?</p> <p>24 JUDGE DAVIDSON: Let's do it.</p> <p>25 JUDGE BENTON: Judge Wood?</p>	<p style="text-align: right;">152</p> <p>1 would pay 100 percent of the inspection cost?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Is that so that Tricon could supply product</p> <p>4 that had already been shipped?</p> <p>5 A. It was simply -- the industry standard that</p> <p>6 I've seen on the CFR deals has been a hundred percent</p> <p>7 seller at load and the buyer pays at discharge. So if</p> <p>8 Vinmar wanted to share in the cost 50/50, I would</p> <p>9 welcome them paying 50 percent of it, but I thought they</p> <p>10 would be happy with me paying a hundred percent.</p> <p>11 Q. Okay. That's different. Right?</p> <p>12 A. It's different than Ed Leyman's, yes.</p> <p>13 Q. Okay. And my question, is that so that Tricon</p> <p>14 would have the right to supply product under this</p> <p>15 contract that was already on the water?</p> <p>16 A. It had no bearing on product on the water. It</p> <p>17 was simply me offering to pay a hundred percent of the</p> <p>18 costs.</p> <p>19 Q. You do agree it was possible for Tricon</p> <p>20 to under this contract go ahead and ship MX to Asia</p> <p>21 prior to the time that Vinmar had declared a discharge</p> <p>22 port. Correct?</p> <p>23 A. Of course.</p> <p>24 Q. And you could have arranged with your shipping</p> <p>25 company a guaranteed arrival. Correct?</p>
<p style="text-align: right;">151</p> <p>1 JUDGE WOOD: No.</p> <p>2 JUDGE BENTON: Mr. Lee?</p> <p>3 MR. LEE: Thank you.</p> <p>4 Q. (BY MR. LEE) Mr. Lockwood, let me just -- a</p> <p>5 couple of other quick questions on this -- the</p> <p>6 difference between the MOAB confirmation and the sales</p> <p>7 contract, which are in your joint book, Exhibit 4 and</p> <p>8 Exhibit 5.</p> <p>9 I think I'll just ask you one more</p> <p>10 question as opposed to going through all of them. In</p> <p>11 the Joint Exhibit No. 4, the MOAB confirmation, there's</p> <p>12 a provision for inspection. Correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Now, what the confirm says is that the</p> <p>15 inspection cost will be paid equally between buyer and</p> <p>16 seller. Correct?</p> <p>17 A. That's correct.</p> <p>18 Q. So those would be shared. Right?</p> <p>19 A. That's correct.</p> <p>20 Q. The sales contract from -- that you sent to</p> <p>21 Mr. Wilson or Dr. Wilson actually says on the cost of</p> <p>22 inspection that it will be 100 percent to Tricon.</p> <p>23 Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And is that what you intended, that Tricon</p>	<p style="text-align: right;">153</p> <p>1 A. That never happens.</p> <p>2 Q. Is it possible for you to have arranged that?</p> <p>3 A. If a ship owner would be crazy enough to</p> <p>4 guarantee it, yes, but that never happens.</p> <p>5 Q. So it's possible to arrange a guaranteed</p> <p>6 delivery date?</p> <p>7 A. In theory, yes.</p> <p>8 Q. Now, you've said -- and I want to just move on</p> <p>9 to another point. But you've said several times today</p> <p>10 that Mr. Pascu from Vinmar accepted Tricon's sales</p> <p>11 contract?</p> <p>12 A. He --</p> <p>13 Q. You testified to that?</p> <p>14 A. He accepted it except for three points.</p> <p>15 Q. Have you testified to that?</p> <p>16 A. I believe that's what I said earlier.</p> <p>17 Q. Okay. And when you say he accepted Tricon's</p> <p>18 sales contract, what you're referring to is an e-mail</p> <p>19 that Mr. Pascu sent to Vuk Rajevac. Correct?</p> <p>20 A. That's correct.</p> <p>21 Q. I mean, you've never talked to Mr. Pascu?</p> <p>22 A. Never talked to him.</p> <p>23 Q. And you don't know whether he's ever talked to</p> <p>24 Mr. Rajevac, do you?</p> <p>25 A. I'm sure he must have spoken to him, but I</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">154</p> <p>1 don't know when.</p> <p>2 Q. And we can turn to the exhibit, but I just --</p> <p>3 let me ask you. The e-mail that you're talking about is</p> <p>4 an e-mail where Mr. Pascu says, "Here are some comments.</p> <p>5 We'll revert with our purchase order." Correct?</p> <p>6 A. Which exhibit is that?</p> <p>7 Q. How about Joint Exhibit 13? Okay. Mr. Pascu</p> <p>8 says to Mr. Rajevac, "Please find enclosed our comments</p> <p>9 on your sales confirmation." Correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And then he says, "We shall revert soon with</p> <p>12 our purchase order for your review"?</p> <p>13 A. That's correct.</p> <p>14 Q. All right. And the purchase order never was</p> <p>15 sent, was it?</p> <p>16 A. That's correct.</p> <p>17 Q. Is this the document that you claim is the</p> <p>18 acceptance of Tricon's sales contract?</p> <p>19 A. Again, I'm not a lawyer. I'm just looking at</p> <p>20 the fact that on Exhibit 13 on Tricon's sales letter the</p> <p>21 purchase order from Vinmar's number has been written at</p> <p>22 the top.</p> <p>23 You have different checkmarks written on</p> <p>24 there. You have the LC -- letter of credit opening</p> <p>25 date, the expiring date, the cost for them to open a</p>	<p style="text-align: right;">156</p> <p>1 standard." Do you see that?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And there never was an agreement on the</p> <p>4 demurrage time bar. Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And you never signed the sales contract?</p> <p>7 A. That's correct.</p> <p>8 Q. And mister -- Dr. Wilson never signed the</p> <p>9 sales contract. Correct?</p> <p>10 A. That's -- if you're talking about a written</p> <p>11 signature, no.</p> <p>12 Q. Now, you became aware on July 31st -- by the</p> <p>13 way, you were asked some questions earlier about an</p> <p>14 exchange between you and Dr. Wilson on the morning of</p> <p>15 July 31st and the -- that exchange followed -- you first</p> <p>16 went to Ed Leyman on the morning of July 31st and asked</p> <p>17 if there was any MX available. Correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And, in fact, you suggested to Mr. Leyman that</p> <p>20 "You might be interested in buying back the MX that you</p> <p>21 believe you had sold to Vinmar"?</p> <p>22 A. That's correct.</p> <p>23 Q. And you even indicated a price of around</p> <p>24 1230 metric tons?</p> <p>25 A. I think it was 1220.</p>
<p style="text-align: right;">155</p> <p>1 letter of credit and all of the different checkmarks on</p> <p>2 our letter. That's what I'm referring to.</p> <p>3 Q. Okay. But I guess my question was, is this</p> <p>4 what you claim to be an acceptance?</p> <p>5 A. I'm claiming their comments and changes and</p> <p>6 checkmarks on our letter as being what he said he was</p> <p>7 writing on our sales letter.</p> <p>8 Q. But you don't know whether that's an</p> <p>9 acceptance or not, do you?</p> <p>10 A. I'm not aware, no.</p> <p>11 Q. Okay. Now, you do know that Mr. Rajevac</p> <p>12 responded to Mr. Pascu's e-mail. Correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And, by the way, you never heard from</p> <p>15 Dr. Wilson, who was the person at Vinmar who you</p> <p>16 understood had negotiated this alleged deal. Right?</p> <p>17 A. Other than him trying to sell it back, no.</p> <p>18 Q. Okay. And Mr. Rajevac -- it's the next</p> <p>19 exhibit, Joint Exhibit 15.</p> <p>20 A. 14?</p> <p>21 Q. I'm sorry. 14.</p> <p>22 A. Okay.</p> <p>23 Q. Now, Mr. Rajevac says that "Your comments on</p> <p>24 the contract well noted and accepted except for</p> <p>25 demurrage time bar, which is 90 days as per industrywide</p>	<p style="text-align: right;">157</p> <p>1 Q. Okay. And an indication to Mr. Leyman that</p> <p>2 you'd be interested in buying this Vinmar -- this MX</p> <p>3 that you believe you had sold to Vinmar back --</p> <p>4 A. That's correct.</p> <p>5 Q. -- around that price range. Correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And that's why -- and you understand that</p> <p>8 Mr. Leyman picked up a conversation with mister -- or</p> <p>9 Dr. Wilson on that -- on the morning of July 31st.</p> <p>10 Correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And it was following those discussions that</p> <p>13 Rick Wilson then sent you an instant message. And we</p> <p>14 had a conversation about that. Correct?</p> <p>15 A. That's correct.</p> <p>16 Q. All right. That all took place on the morning</p> <p>17 of July 31st?</p> <p>18 A. That's right.</p> <p>19 Q. Prior to -- if you'll just take a look at</p> <p>20 Joint Exhibit 14, the top e-mail is from Mr. Pascu to</p> <p>21 Rick Wilson on July 31, 2008. That's at 1:39 p.m.</p> <p>22 Correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Your exchange with Dr. Wilson occurred prior</p> <p>25 to 1:39 p.m. on July 31st. Correct?</p>

40 (Pages 154 to 157)

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">158</p> <p>1 A. Yes, it did.</p> <p>2 Q. And you don't know when it is that Dr. Wilson</p> <p>3 was informed that Tricon had a different version of the</p> <p>4 contract than he did, do you?</p> <p>5 A. No, I don't.</p> <p>6 Q. Okay. What you do know is that according to</p> <p>7 Joint Exhibit No. 15, some four minutes after receiving</p> <p>8 an e-mail from Laurentiu Pascu, Dr. Wilson wrote to Vuk</p> <p>9 Rajevac, "Vuk, we cannot accept open origin for this</p> <p>10 material. It must be from the USA." Correct?</p> <p>11 A. That's correct.</p> <p>12 Q. All right. So by July the 31st in the</p> <p>13 afternoon, you were aware that there was a disagreement</p> <p>14 between Tricon and Vinmar about the terms of this</p> <p>15 alleged deal?</p> <p>16 A. Which I believe that is two days after Vuk</p> <p>17 told Laurentiu, yes, that's correct.</p> <p>18 Q. Well, if you want to do that, let's just go</p> <p>19 back. It's five minutes after Mr. Pascu sent Mr. Wilson</p> <p>20 Vuk Rajevac's e-mail. Correct? Take a look at Joint</p> <p>21 Exhibit 14.</p> <p>22 A. That's correct.</p> <p>23 Q. So as of 1:43 p.m. on July 31st, you were</p> <p>24 aware that Vinmar -- there was a disagreement between</p> <p>25 Vinmar and Tricon as to the terms of this alleged deal?</p>	<p style="text-align: right;">160</p> <p>1 want to focus on the page that's labeled at the bottom</p> <p>2 right-hand corner TRI 48.</p> <p>3 A. 48?</p> <p>4 Q. Yes.</p> <p>5 A. This is Vinmar -- okay. Vinmar exhibits.</p> <p>6 Sorry. 14?</p> <p>7 Q. 9.</p> <p>8 A. 9.</p> <p>9 Q. And it's TRI 48. It's Page 6 of 9.</p> <p>10 A. Okay. I have it.</p> <p>11 Q. Okay. Now, you've done at least 300 deals</p> <p>12 with Ed Leyman?</p> <p>13 A. Approximately, yes.</p> <p>14 Q. Has that number increased since the time you</p> <p>15 were deposited?</p> <p>16 A. Yes, it has.</p> <p>17 Q. You've done a number of deals using Mr. Leyman</p> <p>18 as a broker. Correct?</p> <p>19 A. Since I was deposited.</p> <p>20 Q. Just in general.</p> <p>21 A. Oh, yes.</p> <p>22 Q. A large number?</p> <p>23 A. Over the course of my career, around 300 or</p> <p>24 so.</p> <p>25 Q. Paid him substantial commissions. Correct?</p>
<p style="text-align: right;">159</p> <p>1 A. That would be assuming that Vuk told me at the</p> <p>2 same time.</p> <p>3 Q. Well, you learned it that day. Correct?</p> <p>4 A. Well, that would mean that Rick Wilson learned</p> <p>5 it on the 29th as well.</p> <p>6 Q. No. That's not my question, Mr. Lockwood. My</p> <p>7 question is, did you not learn on July 31st that there</p> <p>8 was a disagreement between Vinmar and Tricon about the</p> <p>9 terms of the alleged deal?</p> <p>10 A. I'm saying if I apply the same logic that I</p> <p>11 learned on an e-mail that I was not copied on the same</p> <p>12 day that it was sent, then that would mean Rick Wilson</p> <p>13 learned on the 29th as well on an e-mail he was not</p> <p>14 copied on.</p> <p>15 MR. LEE: Object as nonresponsive to my</p> <p>16 question.</p> <p>17 JUDGE BENTON: That is sustained. Ask the</p> <p>18 question again, please.</p> <p>19 MR. LEE: Yes, sir.</p> <p>20 Q. (BY MR. LEE) Mr. Lockwood, my question is,</p> <p>21 isn't it true that on July 31st, 2008, you learned that</p> <p>22 there was a disagreement between Tricon and Vinmar as to</p> <p>23 the terms of the alleged deal?</p> <p>24 A. Yes, because my scheduler told me immediately.</p> <p>25 Q. Now, let's go to Vinmar Exhibit No. 9. And I</p>	<p style="text-align: right;">161</p> <p>1 A. Whatever the market price was I paid him.</p> <p>2 Q. You told -- let's start on August the 6th</p> <p>3 there. You asked Mr. Leyman -- these are again instant</p> <p>4 message conversations.</p> <p>5 JUDGE DAVIDSON: What exhibit?</p> <p>6 MR. LEE: I'm sorry. It's Vinmar</p> <p>7 Exhibit 9.</p> <p>8 JUDGE DAVIDSON: Okay.</p> <p>9 MR. LEE: The -- Page 6 of 9. It's</p> <p>10 TRI 48. I'm sorry.</p> <p>11 JUDGE DAVIDSON: No. I'm just -- okay.</p> <p>12 Got it.</p> <p>13 MR. LEE: And it's TRI 48.</p> <p>14 A. At the bottom you have to see TRI 48.</p> <p>15 Q. (BY MR. LEE) And I want to start midway down</p> <p>16 there on August the 6th, 2008. You see that? You pick</p> <p>17 up a conversation with Mr. Leyman at 2:36 p.m.?</p> <p>18 A. Okay.</p> <p>19 Q. You see that?</p> <p>20 And you -- the first thing you say is,</p> <p>21 "July 22nd."</p> <p>22 He responds, "Phone."</p> <p>23 Now, what you were asking Mr. Leyman is</p> <p>24 whether he had any notes or instant messages with Vinmar</p> <p>25 that would document the terms of the deal that you</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">162</p> <p>1 believe he had negotiated. Correct?</p> <p>2 A. Let me read the context of that response.</p> <p>3 Okay. Can you repeat the question for me?</p> <p>4 Q. Sure. You started by saying, "July 22nd," and</p> <p>5 he responded, "Phone." And what you wanted to know is</p> <p>6 were there any notes or recordings or anything that</p> <p>7 might contain the terms of the deal that Mr. Leyman had</p> <p>8 been authorized by Vinmar to accept?</p> <p>9 A. Where did I ask that? I don't see --</p> <p>10 Q. I'm just asking, isn't that what you're asking</p> <p>11 him about here?</p> <p>12 A. I have no idea. I can't -- I don't see</p> <p>13 anything that says that.</p> <p>14 Q. Okay. Well, you respond -- when he says,</p> <p>15 "Phone," you respond and say, "It's okay. You know the</p> <p>16 truth. You know what was agreed in your confirmation</p> <p>17 and my contracts prove that." You see that?</p> <p>18 A. I see that sentence, yes.</p> <p>19 Q. And weren't you first asking him, do you have</p> <p>20 anything in paper between you and Mr. Wilson that will</p> <p>21 demonstrate what terms he authorized you to accept?</p> <p>22 A. No. Actually I think I was referring to the</p> <p>23 fact when the deal was done and I said, "July 22nd."</p> <p>24 He said, "On the phone."</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">164</p> <p>1 A. Through when did you say?</p> <p>2 Q. Through February. I think the last one in</p> <p>3 here is February 4th, 2009.</p> <p>4 A. It looks like February the 11th is out of</p> <p>5 order. February the 11th, 2010.</p> <p>6 Q. I'm sorry. The February 11th reference,</p> <p>7 though, is not between you and Mr. Leyman. That -- it</p> <p>8 was produced -- if you'll see the Bates labels in the</p> <p>9 bottom right-hand corner, they're produced in that order</p> <p>10 but your conversation on February 11th was not with</p> <p>11 Mr. Leyman. Correct?</p> <p>12 A. Okay. Yeah, you're right. February 4th,</p> <p>13 you're correct.</p> <p>14 Q. Okay. Now, if you go to -- let's see the</p> <p>15 page -- TRI 282.</p> <p>16 A. Okay.</p> <p>17 Q. And this is an instant message exchange</p> <p>18 between you and Mr. Leyman on October 17th, 2008.</p> <p>19 Correct?</p> <p>20 A. That's correct.</p> <p>21 Q. All right. And you tell Mr. Leyman, "Be</p> <p>22 prepared. Somehow you will be needed to help me get my</p> <p>23 money from Vinmar." Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Okay. And what you were referring to when you</p>
<p style="text-align: right;">163</p> <p>1 A. So that's what I was referring to.</p> <p>2 Q. And then you tell him that you're glad you</p> <p>3 would vouch for me -- you meaning Ed Leyman -- if it</p> <p>4 comes to that. Right?</p> <p>5 A. That's correct.</p> <p>6 Q. And you -- several times throughout these</p> <p>7 instant messages beginning on July 31st and throughout</p> <p>8 August the 6th you made several references to the fact</p> <p>9 that you would -- you were very glad that Mr. Leyman is</p> <p>10 there and that he'll vouch for you. Right?</p> <p>11 A. That's correct.</p> <p>12 Q. Were you trying to make it clear to him that</p> <p>13 you expected him to support Tricon's position?</p> <p>14 A. I just knew that he knew the truth as long as</p> <p>15 I did -- as well as I did so I was glad that somebody</p> <p>16 else knew the truth. That's all.</p> <p>17 Q. Let me ask you to -- you can keep this</p> <p>18 notebook open. I'm going to come back to it, but I</p> <p>19 wanted to make a jump real quick to -- actually I'm</p> <p>20 sorry. No, no, no. Same notebook. I've got three of</p> <p>21 those. Vinmar exhibits, let's go to 16.</p> <p>22 Now, Vinmar Exhibit 16 contains a number</p> <p>23 of instant messages between you and Ed Leyman starting</p> <p>24 on August 11th and going through February 4, 2009.</p> <p>25 Correct?</p>	<p style="text-align: right;">165</p> <p>1 said "my money," is that a reference to the bonus that</p> <p>2 you expect to receive?</p> <p>3 A. No. It meant for the company for Vinmar to</p> <p>4 perform on the deal.</p> <p>5 Q. You wanted to make sure that Mr. Leyman knew</p> <p>6 that you'd need his help. Right?</p> <p>7 A. It looks like I was saying that the invoice we</p> <p>8 had invoiced Vinmar for repudiation was due on Wednesday</p> <p>9 and surely they probably won't pay so be ready because</p> <p>10 we'll be going through arbitration and we'll want him to</p> <p>11 speak the truth.</p> <p>12 Q. What you said was, "Somehow you will be needed</p> <p>13 to help me get my money from Vinmar." Right?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And if you go to the next page, now,</p> <p>16 you did -- you called Rick Wilson several months after</p> <p>17 he had left Vinmar's employment. Right?</p> <p>18 A. I don't know the exact time, but, yes, I did</p> <p>19 call him.</p> <p>20 Q. You called him after he had left Vinmar's</p> <p>21 employment?</p> <p>22 A. That's correct.</p> <p>23 Q. And, in fact, here on IM -- on Page 238 -- I'm</p> <p>24 sorry, 283, these are instant message exchanges again</p> <p>25 between you and Mr. Leyman, this time on January 30,</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">166</p> <p>1 2009. Right?</p> <p>2 A. Yeah.</p> <p>3 Q. And you ask Mr. Leyman, "Where did Rick Wilson</p> <p>4 go?"</p> <p>5 A. That's correct.</p> <p>6 Q. And what you tell Mr. Leyman is, "I really</p> <p>7 want to try and contact him again today," him being</p> <p>8 Dr. Wilson. Right?</p> <p>9 A. That's right.</p> <p>10 Q. And you say, "Since he's no longer with</p> <p>11 Vinmar, I'm hoping that he would admit that he thought</p> <p>12 we had a deal?"</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. So were you hoping that -- were you</p> <p>15 under the impression that Vinmar had told Dr. Wilson</p> <p>16 that he needed to take the position that there was no</p> <p>17 deal?</p> <p>18 A. I had no way -- no understanding of why</p> <p>19 somebody would not perform, if it was by his own</p> <p>20 volition or the company pressuring him, but my hope was</p> <p>21 that by contacting him outside of the company that was</p> <p>22 not performing that he would be able to speak the truth.</p> <p>23 Q. You were hoping that maybe he had an axe to</p> <p>24 grind against Vinmar. Right?</p> <p>25 A. No. I just wanted the truth.</p>	<p style="text-align: right;">168</p> <p>1 that before?</p> <p>2 A. Never had a need to.</p> <p>3 Q. Did you ask him after the transaction came</p> <p>4 into dispute?</p> <p>5 A. I thought my lawyers had asked, if I remember.</p> <p>6 Q. Okay. Do you remember at any point in time</p> <p>7 between July 22nd, 2008, and -- at any point after that</p> <p>8 where you asked Mr. Leyman for his records?</p> <p>9 A. I may have tried to help gather documents for</p> <p>10 the lawyers, but I don't remember.</p> <p>11 Q. Okay. You don't remember approaching</p> <p>12 Mr. Leyman requesting documents?</p> <p>13 A. Not specifically, no.</p> <p>14 Q. The last page of your instant messages, this</p> <p>15 is on TRI 285.</p> <p>16 A. Okay.</p> <p>17 Q. Again, this is Vinmar Exhibit 16.</p> <p>18 A. Okay.</p> <p>19 Q. And on February 4th, 2009, if you'll look</p> <p>20 midway down, you said, "Did you ever tell Rick Wilson or</p> <p>21 Vinmar that your hard drive crashed?"</p> <p>22 Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And then you say, "I.e., did they ever ask you</p> <p>25 to produce information/communication regarding our</p>
<p style="text-align: right;">167</p> <p>1 Q. Didn't -- when you called him, didn't you</p> <p>2 suggest to him that Vinmar wasn't a great place for him</p> <p>3 to work?</p> <p>4 A. Not at all.</p> <p>5 Q. No? Didn't you suggest to Dr. Wilson that he</p> <p>6 could help you get his bonus back?</p> <p>7 A. No. That's not what I said.</p> <p>8 Q. You did ask him if he thought that the deal</p> <p>9 required U.S. origin. Right?</p> <p>10 A. I did.</p> <p>11 Q. And he told you yes, that was his</p> <p>12 understanding?</p> <p>13 A. That's what he said.</p> <p>14 Q. And he's never wavered from that, has he?</p> <p>15 A. That's the only time I've spoken to him.</p> <p>16 Q. Now, when you -- you had told Mr. Leyman on</p> <p>17 July 31st that you would need his help and you've</p> <p>18 continued that throughout. At what point in time did</p> <p>19 you ask Mr. Leyman to preserve his records relating to</p> <p>20 this alleged transaction?</p> <p>21 A. I don't ever remember discussing his records.</p> <p>22 Q. You know that MOAB records phone</p> <p>23 conversations. Correct?</p> <p>24 A. I did not know that until this deal.</p> <p>25 Q. Okay. You have never asked Mr. Leyman about</p>	<p style="text-align: right;">169</p> <p>1 deal?"</p> <p>2 A. Okay.</p> <p>3 Q. Why did you put that in parentheses? Does</p> <p>4 that have some special meaning in an instant message?</p> <p>5 A. Not really, no.</p> <p>6 Q. All right. When did Mr. Leyman tell you that</p> <p>7 his hard drive had crashed?</p> <p>8 A. I don't remember if he told me or our lawyers</p> <p>9 directly, but we found out that his hard drive had</p> <p>10 crashed.</p> <p>11 Q. And what did you find out?</p> <p>12 A. That whatever he had on his hard drive had</p> <p>13 been overwritten or something to that effect.</p> <p>14 Q. Okay. And you said, "Meaning Rick Wilson</p> <p>15 never asked you to reproduce Yahoo communications,</p> <p>16 et cetera," and then you said, "Like when I asked you</p> <p>17 but you said your hard drive crashed"?</p> <p>18 A. Okay.</p> <p>19 Q. When did you ask him?</p> <p>20 A. I have no idea.</p> <p>21 Q. Okay. And you had -- you reminded him that he</p> <p>22 had told you his hard drive crashed. Right?</p> <p>23 A. That's right.</p> <p>24 Q. And then you told him later, "Hey, there's a</p> <p>25 chance that Vinmar may try to call you today."</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">170</p> <p>1 A. Where do you see that? 2 Q. A little bit further down at 16:10:34, 3 "There's a chance Vinmar may try to call you now from 4 our mediation session." Do you see that? 5 A. Right. I see that. 6 Q. Is there a reason why you felt the need to 7 tell -- to remind Mr. Leyman that his hard drive had 8 crashed before telling him that Vinmar might be calling 9 him? 10 A. No. 11 Q. Let's go back to Vinmar Exhibit 9. 12 A. Okay. 13 Q. And, again, these are the additional instant 14 message communications between you and Mr. Leyman and I 15 want to go to the page that's marked TRI 50 -- 16 A. Okay. 17 Q. -- which is Page 8 of 9 in the exhibit. 18 A. Okay. 19 Q. And at 5:50:35 p.m., so it's about a quarter 20 of the way down the page, you start with the statement, 21 "Let me ask you a question." Do you see that? 22 A. Uh-huh. 23 Q. And you said -- this is, again, to Mr. Leyman. 24 Right? 25 A. Right.</p>	<p style="text-align: right;">172</p> <p>1 Q. (BY MR. LEE) Okay. And so the offer that you 2 had made started with a quality of 843? 3 A. That's correct. 4 Q. Right. And the ASTM, the 5211, is a different 5 quality mixed xylene. Correct? 6 A. That's correct. 7 Q. Okay. Now, were you confused about what had 8 transpired on July 22nd? 9 A. Not at all. 10 Q. You asked him, how did we go from my original 11 offer to something different? 12 A. I remember it very clearly. 13 Q. Okay. And Mr. Leyman then responded to you 14 and he said, "Look, the negotiations were for only 5211 15 so the quality that Vinmar was interested in was always 16 the ASTM 5211 quality." Correct? 17 A. That's correct. 18 Q. And you -- in fact, you even asked, "Basically 19 he bid on 5211 only basis, I guess"? 20 A. That's correct. 21 Q. And Mr. Leyman said, "Yes. Never bid or 22 showed any interest for 843 spec"? 23 A. That's correct. 24 Q. Right. Okay. You testified earlier today 25 that Vinmar on August the 6th went back to Mr. Leyman.</p>
<p style="text-align: right;">171</p> <p>1 Q. You said, "Let me ask you a question. Here 2 was my original offer to you on Yahoo." 3 A. Right. 4 Q. And then you mentioned a deal that was a CFR 5 meeting ISO -- "Asia isomer spec 843." Do you see that? 6 A. I do. 7 Q. And then you ask, "How did we go from that 8 quality to 5211?" 9 A. Right. 10 Q. Right. Now, what you're referring to there is 11 that you -- in your instant message exchanges with 12 Mr. Leyman back on July 22nd you had made an offer to 13 sell mixed xylenes with a ASTM quality 843. 14 A. With the additional parameters, yes. 15 Q. Okay. And that was -- that is different than 16 the quality that ended up in the confirmation. Correct? 17 A. People make firm offers and bids all the time 18 that are not accepted. This is a perfect example. 19 Q. I'm sorry. My question was, isn't that 20 different than what ended up in the confirmation? 21 A. And I just said I made a firm offer that was 22 not accepted so this is a perfect example of that 23 situation. 24 JUDGE DAVIDSON: So the answer is "Yes"? 25 A. The answer is yes.</p>	<p style="text-align: right;">173</p> <p>1 And even though the price had fallen of mixed xylenes 2 Vinmar went back and said, "Recommitted to the deal at 3 the same price." Correct? 4 A. Can you show me that exhibit? 5 Q. Sure. It's Joint Exhibit 18. I think we 6 looked at that this morning. And I'm going to come back 7 to these instant messages so if you keep your hand 8 there, but this is the Joint Exhibit No. 18 which I 9 believe you looked at this morning. 10 A. Okay. I see it now. 11 Q. And all I want you to see here, Mr. Lockwood, 12 is that, in fact -- I understand that you testified this 13 morning that Mr. Wilson made or Dr. Wilson made 14 additional changes that you didn't agree with, but he 15 did tell Mr. Leyman on August the 6th he recommitted the 16 price of 1310. Right? 17 A. With additional changes of the declaration 18 date, yes. 19 Q. I understand that. And I just -- I just 20 wanted to acknowledge here that it was the same price 21 even though the mixed xylene market had fallen by this 22 time. Right? 23 A. This is the non-good faith offer that I 24 referred to because of the change in declaration. 25 Q. Got you. And you said -- you testified this</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">174</p> <p>1 morning that you responded. You gave a proposal to 2 Vinmar to supply two different types of mixed xylene. 3 Correct? 4 A. I did, yes. 5 Q. And we can look at it, but don't you remember 6 the first option that you presented, this one that you 7 testified this morning that was mixed xylenes that would 8 have an ETA of the first half of September, the quality 9 in that mixed xylene was the 843 and not the 5211? 10 Correct? 11 A. With the additional parameters that met the 12 standard Asia spec, that's correct. 13 Q. It was 843 spec, not 5211? 14 A. You cannot say 843 by itself. You have to 15 point out the additional parameters as well. 16 Q. Okay. Well, it says 843 and additional 17 parameters versus the 5211 that was in the confirmation. 18 Correct? 19 A. That's correct. 20 Q. Okay. And then the second offer that you made 21 on August the 6th was to deliver U.S. origin MX, meaning 22 the 5211 quality standard, but it wouldn't arrive in 23 Asia until mid October. Correct? 24 A. That's correct, but one thing to point out in 25 the first one it also was U.S. origin as well.</p>	<p style="text-align: right;">176</p> <p>1 anything other than mixed xylenes meeting the ASTM 5211 2 standard"? 3 A. Okay. 4 Q. We just went through that. I'm just trying to 5 get a placeholder. Is that what you recall as sort of 6 the general -- 7 A. I can't remember the general conversation. I 8 can read the words, but tell me what you're asking 9 specifically. 10 Q. Well, isn't that what you start this 11 conversation off with on -- I mean, we can go back to 12 the question you said at 5:51 p.m., "How did we go from 13 that quality to 5211?" 14 And Mr. Leyman says, "The negotiations 15 were only for 5211." 16 A. That's correct. 17 Q. Okay. And -- now, what Mr. Leyman -- at 6:02 18 on August the 6th, it's about three quarters of the way 19 down, 6:02:57 p.m., Mr. Leyman says, "If he doesn't have 20 it sold." He's talking about Dr. Wilson. Correct? Are 21 you with me? 22 A. I see that, yes. 23 Q. Okay. "If he doesn't have it sold." That's 24 Dr. Wilson. Right? 25 A. That's right.</p>
<p style="text-align: right;">175</p> <p>1 Q. Sure, but it was a different quality. 2 Correct? 3 A. Right, but you mentioned U.S. origin in the 4 second so I just wanted to point that out. 5 Q. I'm sorry. I didn't mean to omit that. 6 You're correct. 7 Now, if you go back to Vinmar Exhibit 8 No. 9, which again is instant message exchanges between 9 you and Mr. Leyman again. 10 MR. LEE: And I apologize for jumping back 11 and forth but -- 12 JUDGE DAVIDSON: I'm up to the challenge 13 and I know they are. 14 Q. (BY MR. LEE) Now, what you pick up with -- 15 here again, this is the -- the discussion that's really 16 going on here -- and this is TRI 50, it's Page 8 of 9 on 17 August the 6th in the late afternoon. What you're 18 discussing with Mr. Leyman is the fact that Vinmar 19 didn't accept the proposals that you had offered. 20 Correct? 21 A. Which part are you saying? 22 Q. Well, I'm just saying that that -- isn't that 23 what's really happening here, that you were questioning 24 hey, didn't I originally bid 843 and Mr. Leyman is 25 saying, "Yes, but Vinmar has never shown an interest in</p>	<p style="text-align: right;">177</p> <p>1 Q. "Why would they reconfirm today a desire to 2 buy first half September U.S. origin at 1310 a metric 3 ton?" 4 A. I see that. 5 Q. And you responded, "He's only changing the 6 terms of the deal. That's all he's trying to do." 7 Right? 8 A. I do. 9 Q. Okay. And Mr. Leyman responds to that at 10 6:07 p.m. and says, "But if the MX market is lower than 11 on July 22nd, and it is, why would he send in writing a 12 firm proposal to buy at 1310?" 13 A. Okay. I see that. 14 Q. Okay. And, again, you respond and say, "You 15 can't change the terms of the deal." Right? 16 A. Yes, that's correct. 17 Q. Okay. And at the top of the next page at 18 6:12, Page 9 of 9, Mr. Leyman again says to you, "The 19 fact that Vinmar is still willing to pay 1310 in a 20 market that is much lower suggests that they are not 21 just walking or running away from the deal." Right? 22 A. That's what Ed wrote, that's correct. 23 Q. Okay. You don't agree with that, do you? 24 A. That's why Ed's a broker, not a trader. 25 Q. Okay. In fact, he says a little bit further</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">178</p> <p>1 down at 6:13 p.m., "They didn't come back with an 2 argument that there is no deal, but they would still buy 3 the 5 KT but at 1250 or 1225 or whatever. They repeated 4 1310." Right?</p> <p>5 A. That's what he wrote, yes.</p> <p>6 Q. Okay. And you said, "Well, I don't understand 7 why they wouldn't accept No. 1 alternative"?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And what you're referring to there is the 10 offer that you made in your letter on October -- on 11 August the 6th in which you offered ASTM 843 MX. Right?</p> <p>12 A. With the additional parameters, yes.</p> <p>13 Q. Okay. And Mr. Leyman responded, "Don't know 14 enough about Asia buyers to answer. However, Vinmar's 15 interest in the USGC, any with U on CFR was also 5211." 16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. And USGC, that's -- you understand that to be 19 U.S. Gulf Coast. Right?</p> <p>20 A. That's correct.</p> <p>21 Q. And then Mr. Leyman at 6:18 again comes back 22 to you and says, "Given the fact that they will still 23 pay 1310 in a falling market, even if you perceive it as 24 changing the deal after the fact, it commercially makes 25 sense to you if you can supply the U.S. origin cargo for</p>	<p style="text-align: right;">180</p> <p>1 A. Oh, joint. Okay.</p> <p>2 Q. Monday, August 11th at 3:02 a.m. Right?</p> <p>3 A. That's right.</p> <p>4 Q. Now, is this the document that you claim 5 constitutes the notice of a replacement sale?</p> <p>6 A. This was me declaring the option under my 7 contract at that time. I'm not sure if that was the 8 replacement sale or not, but that was me exercising the 9 option.</p> <p>10 JUDGE BENTON: 22?</p> <p>11 MR. LEE: I'm sorry. It's Joint 12 Exhibit 22.</p> <p>13 JUDGE BENTON: Got it.</p> <p>14 Q. (BY MR. LEE) Okay. So this was not 15 necessarily you identifying this mixed xylene that you 16 believe you had sold to Vinmar to a separate contract?</p> <p>17 A. Once they didn't declare the discharge port as 18 per the contract on August the 8th, I knew I needed to 19 exercise the option to at least give myself a chance.</p> <p>20 Q. Okay. And is that what you were doing here?</p> <p>21 A. Yes, I was.</p> <p>22 Q. Okay.</p> <p>23 JUDGE BENTON: Just a second. Who's this 24 e-mail to?</p> <p>25 THE WITNESS: The problem is with the</p>
<p style="text-align: right;">179</p> <p>1 first half September." You see that?</p> <p>2 A. I do.</p> <p>3 Q. Okay. You didn't agree with Mr. Leyman, did 4 you?</p> <p>5 A. Because he obviously is not taking into 6 account the risk of the shipping so that's again why I 7 say he's a broker, not a trader.</p> <p>8 Q. And we see that on August the 8th, 2008, you 9 testified this morning that you declared Vinmar in 10 breach of the contract. Correct?</p> <p>11 A. On which date?</p> <p>12 Q. August the 8th.</p> <p>13 A. I believe you're correct, yes.</p> <p>14 Q. Okay. And so at that point you said, "Vinmar, 15 you've breached the agreement and we have the right to 16 resell it."</p> <p>17 A. That's correct.</p> <p>18 Q. And if I understand your testimony correctly, 19 your claim is that you on August the 11th identified the 20 mixed xylene that you intended to supply to Vinmar, you 21 identified that to a separate contract?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. And that was on the morning of August 24 the 11th? And let's go to Joint Exhibit 22. I'm sorry. 25 Yeah, Joint Exhibit 22. So --</p>	<p style="text-align: right;">181</p> <p>1 Koreans, their e-mail addresses don't show up in 2 English. It shows up as question marks. So if you 3 double-click on those question marks --</p> <p>4 JUDGE BENTON: Okay.</p> <p>5 THE WITNESS: -- you would see their 6 Korean e-mail addresses.</p> <p>7 JUDGE BENTON: Okay.</p> <p>8 THE WITNESS: So those are -- those are 9 individuals at KP Chemical.</p> <p>10 JUDGE BENTON: All right. Very good.</p> <p>11 Q. (BY MR. LEE) Okay. So just to be clear, 12 Vinmar wasn't copied on this e-mail. Correct?</p> <p>13 A. Definitely not.</p> <p>14 Q. And, in fact, Vinmar isn't even mentioned 15 anywhere in it?</p> <p>16 A. No, they weren't.</p> <p>17 Q. And -- but is this the replacement sale? Is 18 this the identification of the replacement sale?</p> <p>19 A. Yes, it was.</p> <p>20 Q. All right. Let's talk about that, your 21 agreement with KP Chem.</p> <p>22 A. Okay.</p> <p>23 Q. And if we go to Joint Exhibit No. 1. Okay. I 24 want to make sure I understand this. Joint Exhibit 1 is 25 the contract between Tricon and KP Chem?</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">182</p> <p>1 A. That's right.</p> <p>2 Q. And it's your testimony, if I wrote it down</p> <p>3 correctly this morning, that you -- there was an option</p> <p>4 in the document that allowed the parties to -- let me</p> <p>5 make sure I understood this correctly. That KP Chem was</p> <p>6 given an option to load material whenever it wanted?</p> <p>7 A. KP -- if you look on Exhibit A at the end</p> <p>8 of -- at the end of Exhibit 1, the first clause in that</p> <p>9 says, "Tricon to declare FOB or CFR on or by the 10th of</p> <p>10 the prior month."</p> <p>11 Q. Right.</p> <p>12 A. And KP -- I don't know if that's actually</p> <p>13 written correctly because KP is really the one that</p> <p>14 decided whether or not they wanted to load FOB. I was</p> <p>15 really only deciding whether or not I would exercise my</p> <p>16 CFR option.</p> <p>17 Q. Okay. Well, but you don't see anywhere in</p> <p>18 this contract that there -- that there's an option for</p> <p>19 KP Chem to decide whether they wanted to take product or</p> <p>20 not?</p> <p>21 A. "Resale policy on FOB Shipments: KP Chemicals</p> <p>22 has the right to resell the barrels on the condition of</p> <p>23 giving Tricon Energy the first right of refusal."</p> <p>24 I don't think it's spelled out clearly,</p> <p>25 no.</p>	<p style="text-align: right;">184</p> <p>1 Q. All right. And, in fact, as you pointed out</p> <p>2 in Exhibit A to the contract, it says that Tricon has</p> <p>3 the right to declare FOB or CFR?</p> <p>4 A. That's correct.</p> <p>5 Q. I think this morning you had testified that it</p> <p>6 was -- that Tricon only had the right to declare CFR but</p> <p>7 KP Chem had the right to declare FOB deals?</p> <p>8 A. I said that we had the right to trump their</p> <p>9 FOB no matter what. If they want the product FOB, we</p> <p>10 can still trump that with the CFR option.</p> <p>11 Q. Okay. But this document, as I read it, says</p> <p>12 that it's all up to Tricon as to whether they want --</p> <p>13 Tricon wants to declare an FOB or a CFR option.</p> <p>14 Correct?</p> <p>15 A. Right.</p> <p>16 Q. Now, this document, this sales contract</p> <p>17 between KP Chem and Tricon is very similar in format to</p> <p>18 the sales contract that Tricon sent to Vinmar. Correct?</p> <p>19 A. I believe so.</p> <p>20 Q. And in this one, we see that you actually</p> <p>21 signed the document, Page 4. Right?</p> <p>22 A. Yes, I did.</p> <p>23 Q. Okay. Tricon does not make mixed xylenes?</p> <p>24 A. That's correct.</p> <p>25 Q. So in order to supply -- in order to supply MX</p>
<p style="text-align: right;">183</p> <p>1 Q. Okay. In fact, if you look at the first page</p> <p>2 of the Joint Exhibit No. 1, it says the Incoterm is,</p> <p>3 "FOB Texas Gulf coast or Lake Charles, L -- Louisiana or</p> <p>4 CFR Ulsan, Korea, all in supplier's option." Right?</p> <p>5 A. That's correct.</p> <p>6 Q. That's you? That's Tricon?</p> <p>7 A. That's right.</p> <p>8 Q. And the contract says that it requires Tricon</p> <p>9 to supply KP Chem with 5,000 metric tons of MX every</p> <p>10 month for 12 months. Correct?</p> <p>11 A. That's correct.</p> <p>12 Q. All right. There is no option in this</p> <p>13 contract. Correct?</p> <p>14 A. I've had this contract with them since 2006</p> <p>15 and every year we change certain clauses so I'm not sure</p> <p>16 if this was written correctly at the time, but I'm</p> <p>17 pretty sure that I recall for the year of 2008 the whole</p> <p>18 reason they had the contract was they had the</p> <p>19 flexibility whether to load or not.</p> <p>20 And if it isn't spelled out correctly</p> <p>21 here, I'm sure we changed it later. It doesn't show</p> <p>22 that here, but I know that's what occurred.</p> <p>23 Q. Okay. So what we have here doesn't show that</p> <p>24 option. Correct?</p> <p>25 A. I think so. You're right.</p>	<p style="text-align: right;">185</p> <p>1 to Vinmar under the alleged transaction, Tricon would</p> <p>2 have had to get that from someplace. Correct?</p> <p>3 A. By September 15th, yes.</p> <p>4 Q. Okay. And the same thing for this KP Chem</p> <p>5 contract. In order for Tricon to supply mixed xylenes</p> <p>6 to KP Chem under this contract, Tricon would have to go</p> <p>7 purchase it from someplace else?</p> <p>8 A. Just like Vinmar. You can sell before you</p> <p>9 buy. So, yes, this is what this is.</p> <p>10 Q. Okay. So, again, you have to buy it before</p> <p>11 you could deliver it. Right?</p> <p>12 A. But not before you sell it.</p> <p>13 Q. I understand. That wasn't my question. My</p> <p>14 question was, in order to actually deliver product under</p> <p>15 this contract or under the alleged deal with Vinmar</p> <p>16 Tricon would have to purchase it from someplace.</p> <p>17 Correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Because you don't make it?</p> <p>20 A. That's correct.</p> <p>21 Q. And just so that I make sure I understand how</p> <p>22 this KP Chem contract works, if you declare a -- if you</p> <p>23 nominate cargo for CFR delivery, the nomination would be</p> <p>24 in August. I mean, let's just use the August --</p> <p>25 A. Okay.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">186</p> <p>1 Q. -- we have in front of us. The nomination 2 would be in August? 3 A. That's correct. 4 Q. The mixed xylenes would actually be delivered 5 in October but they would be priced in September? 6 A. That's exactly right. 7 Q. Okay. 8 A. That's what they preferred. 9 Q. Okay. Now, the alleged deal between Vinmar 10 and Tricon required Tricon to deliver mixed xylenes to 11 Vinmar on or before September 15th, 2008? 12 A. That's correct. 13 Q. And so to supply that contract, Tricon would 14 have had to go out someplace to get the mixed xylenes. 15 Correct? 16 A. That's correct. 17 Q. And that would have to be done before 18 September 15th, 2008? 19 A. That's correct. 20 Q. Now, even if we assume that under Tricon's 21 alleged version of the contract, which means you could 22 supply it from anywhere. Is that correct? 23 A. That's correct. 24 Q. Isn't it true that you would have certainly 25 purchased it sometime prior to September 15th, 2008?</p>	<p style="text-align: right;">188</p> <p>1 the one that requested the decreased volume? 2 A. That's correct. 3 Q. Okay. And that Tricon elected to agree to 4 that request? 5 A. After being forced to, yes. 6 Q. Well, isn't -- isn't it the case that Tricon 7 was actually behind on its volume requirements to 8 KP Chem? 9 A. What are you referring to? 10 Q. Well, I'm just asking, isn't it the case that 11 it wasn't KP Chem forcing you to deliver less, that 12 actually as of September of 2008 Tricon was behind on 13 the volume it was required to supply to KP Chem under 14 this contract? 15 A. Not at all. 16 JUDGE BENTON: Just a second. I thought 17 you said that you reduced it not because you were forced 18 to but you just made a business decision to -- in order 19 to please a long-term customer. 20 THE WITNESS: But I was saying that there 21 was a lot of subtle pressure for them to push me to 22 reduce it because they said if I did not agree then that 23 would -- could affect negatively next year's contract 24 beyond that. 25 JUDGE BENTON: Okay.</p>
<p style="text-align: right;">187</p> <p>1 A. No, that's not correct. 2 Q. So you might have waited until September 15th, 3 2008, to supply that? 4 A. If I was feeling particularly risky, yes, I 5 could have. 6 Q. Okay. And -- but certainly by September 15th, 7 2008, you would have had to have MX in your hands to 8 deliver to Vinmar? 9 A. I would have had to purchase it at least by 10 that day. 11 Q. Okay. Now, I believe your testimony this 12 morning was that Tricon only delivered 3400 metric tons 13 of mixed xylenes to KP Chem under this September CFR? 14 A. 32 or 3400. I don't remember exactly. 15 Q. I'll say 34. I think the invoice was less 16 5 percent, but I'm going to show you some documents in a 17 minute -- 18 A. Okay. 19 Q. -- that talk about 3400 metric tons. 20 A. Okay. 21 Q. So it's your testimony then that the actual 22 delivery was 3,230 metric tons? 23 A. I have no idea. I just know it was around 24 3400. 25 Q. Okay. And it's your testimony that KP Chem is</p>	<p style="text-align: right;">189</p> <p>1 THE WITNESS: So KP knew that by me 2 reducing the volume that was beneficial for them because 3 that meant they were taking less product in a falling 4 market. 5 JUDGE BENTON: Okay. But you really 6 weren't forced to? I mean, you could have stood on the 7 contract? 8 THE WITNESS: Nobody held a gun to me 9 but -- 10 JUDGE BENTON: You could have stood on the 11 contract? 12 THE WITNESS: I could have -- I could have 13 stayed, yes. 14 JUDGE BENTON: Okay. All right. Mr. Lee, 15 you may proceed. 16 MR. LEE: Thank you. 17 Q. (BY MR. LEE) I document -- the question I had 18 asked you just a second ago, Mr. Lockwood, was, isn't it 19 true that Tricon was behind on its volume under the 20 contract? 21 A. And, again, I believe I answered no, that's 22 not correct. 23 Q. Why don't we take a look at -- now we're in 24 Tricon's exhibit notebook. 25 A. Okay.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">190</p> <p>1 Q. And we're going to turn to Tricon Exhibit 20. 2 So Tricon Exhibit 20. You with me? 3 A. I am, yes. 4 Q. Now, this is four pages of e-mails between 5 some folks at Tricon and people at KP Chem. Correct? 6 A. That's correct. 7 Q. And if we start with the second page, which is 8 the 2556 down in the right-hand column. 9 A. Okay. 10 Q. The e-mail at the bottom of the page from 11 Chang S at Tricon Energy -- 12 A. Okay. 13 Q. And this is Monday, September -- I'm sorry. 14 Yeah, Monday, September 1, 2008. 15 A. Okay. 16 Q. And Mr. Chang, that's Sa Uk Chang, he's a 17 Tricon employee. 18 A. Employee. 19 Q. Right? 20 A. That's correct. 21 Q. And he is writing an e-mail to Min Way -- or 22 Min Jae Hwang who is with KP Chem? 23 A. That's correct. 24 Q. All right. And what Mr. Chang says is -- he 25 says, "We -- Tricon would like to request to divide</p>	<p style="text-align: right;">192</p> <p>1 Q. I'm asking you, sir. Isn't it -- isn't that 2 the case, there are -- they have 15,000 metric tons as 3 of September 1, 2008? 4 A. Not if we're delivering it when we said we 5 would so how -- where do you see the delivery date that 6 we owed? 7 Q. I'm asking you under the contract, sir, that 8 by September the 1st, 2008, if you're 15,000 metric tons 9 behind, why are you -- you're behind, aren't you? 10 A. My point to you is no, we were not behind. We 11 were delivering right when we said we were. 12 Q. Okay. So it's your testimony you were not 13 behind? 14 A. That's correct. 15 Q. Now, at the bottom of that e-mail, it says, 16 "Bow Pride: Parcel 2: 5,000 metric tons plus or minus 17 5 percent at Platts September FOB Korea average." Do 18 you see that? 19 A. I do. 20 Q. Now, that's the 5,000 metric tons that you 21 claim was originally earmarked for Vinmar? 22 A. That's correct. 23 Q. All right. So at September 1st, it's 5,000 24 metric tons? 25 A. That's correct.</p>
<p style="text-align: right;">191</p> <p>1 quantity as below." All right. 2 A. That's correct. 3 Q. And he says, "We wish you" -- and that's 4 "Tricon wishes that KP Chem understand our situation we 5 are forced to request in our sincere efforts to meet our 6 commitment to you in the last month"? 7 A. Okay. 8 Q. Okay. You see that? 9 A. Uh-huh. 10 Q. And then it talks about the fact that there's 11 a number of shipments that need to be provided to 12 KP Chem. Correct? 13 A. Okay. 14 Q. And, in fact, I think there's handwriting out 15 here that shows 15,771. That's metric tons. Correct? 16 A. That's correct. 17 Q. And then it talks about how those shipments 18 from that volume will be supplied to KP Chem? 19 A. Okay. 20 Q. Correct? 21 A. That's correct. 22 Q. Okay. And isn't that an indication that 23 Tricon was, in fact, behind on its contract with 24 KP Chem? 25 A. How do you figure?</p>	<p style="text-align: right;">193</p> <p>1 Q. Okay. And on the first page of Tricon 2 Exhibit 20, go to the very top e-mail. 3 A. Okay. 4 Q. And, again, this is Mr. Chang, who's a Tricon 5 employee. Right? 6 A. Okay. 7 Q. And he asks his counterparty at KP Chem, he 8 says, "We'd like to adjust our request to declare 9 quantities." Do you see that? 10 A. I do. 11 Q. He says, "Because there are no buyers anywhere 12 for MX, both in Asia and in USA, and our customer, 13 KP" -- that's KP Chem -- "is selling into the market, we 14 needed to take drastic measures to reduce to fixed price 15 exposure." Right? 16 A. Okay. 17 Q. That's a reference to Tricon. Correct? 18 A. That's correct. 19 Q. And then it's Tricon that suggests a change in 20 the way that the product would be delivered. Correct? 21 A. I don't think that's correct because if you 22 look right below it -- let's see. We don't have a -- 23 you don't have all the e-mails between KP directly to 24 Tricon. 25 Q. Well, sir, I have what your -- what y'all</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">194</p> <p>1 produced in this case. So what I'm asking you is, based 2 on this document, is it not true that Mr. Chang is the 3 one that reduces the metric tons on Parcel 2 from 5,000 4 to 3400 metric tons?</p> <p>5 A. It must have been a phone conversation from KP 6 to Sa Uk so in that sense he was responding in writing 7 with what they requested over the phone.</p> <p>8 Q. Okay. Well, what Mr. Chang said in his e-mail 9 is that Tricon needed to take drastic measures to reduce 10 fixed price exposure. So "We," Tricon, "are hoping, 11 based on our supplier's idea, that KP Chem would be able 12 to load other contract cargo from your U.S. supplier in 13 Baton Rouge on to the Bow Pride in order to utilize our 14 space to prevent dead freight and allow us to not face 15 further price down on September MX sales price versus 16 fixed price purchase." Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. So it's Tricon's response to KP Chem to adjust 19 the volumes, is it not?</p> <p>20 A. That's what it appears here.</p> <p>21 Q. Okay. And, in fact, you wrote this e-mail 22 from Mr. Chang, didn't you?</p> <p>23 A. No, because that would not have been my 24 language.</p> <p>25 Q. Well, look at Exhibit 2I in the same document,</p>	<p style="text-align: right;">196</p> <p>1 but increased the amount of MX to be supplied to KP Chem 2 at the higher price of 1235 a metric ton. Isn't that 3 right?</p> <p>4 A. Where do you see that?</p> <p>5 Q. I'm looking at Bow Pride Parcel 1, 6 1595.665 metric tons at 1235, and then 3400 metric tons 7 at the September price. That's 5,000 metric tons more 8 or less. Correct?</p> <p>9 A. I believe you're incorrect because if you look 10 at -- on --</p> <p>11 Q. Well, hang on.</p> <p>12 A. -- Page 25 --</p> <p>13 Q. Stay with me. My question, Mr. Lockwood, is, 14 isn't 3400 plus 1595 close to 5,000?</p> <p>15 A. I'm just saying you said that we increased the 16 1235 and I'm saying you're incorrect in that statement.</p> <p>17 Q. No. I said you increased the volume to be 18 supplied at the price of 1235 on the Bow Pride.</p> <p>19 A. But you have to look at both shipments 20 together. So if you look on Page 2556 and you take the 21 Selendang Sarl, you get 5,021. And you add it to a 22 thousand, that's 6,021 metric tons at 1235.</p> <p>23 If you flip back the page to 2555 and you 24 add 4154 to 1595, that comes out to around 5700, so it 25 was actually reduced --</p>
<p style="text-align: right;">195</p> <p>1 the very next document. This is an e-mail from you to 2 Mr. Chang, Wednesday, September 3rd, at 2:49 a.m., 3 some --</p> <p>4 A. Where is that?</p> <p>5 Q. Well, it's the very next document, right, 6 Tricon Exhibit 2I? You see that?</p> <p>7 A. Okay.</p> <p>8 Q. And you sent that to Mr. Chang on Wednesday, 9 September 3rd, at 2:49 a.m. Mr. Chang sent his e-mail 10 to KP Chem at 3:01 a.m. Right?</p> <p>11 A. That's right.</p> <p>12 Q. And you're the one that suggested to Mr. Chang 13 the quantities and even gave him the language based on 14 there being no buyers anywhere for MX -- and we can read 15 the whole paragraph, but it's virtually identical to the 16 paragraph that Mr. Chang sent to KP Chem later that day. 17 Right?</p> <p>18 A. Okay. You're right. I'm still reading.</p> <p>19 Q. So it certainly appears, according to these 20 documents, that it's -- that it's Tricon that reduced 21 the volume from 5,000 metric tons to 3,400 metric tons?</p> <p>22 A. That's what the document suggests, yes.</p> <p>23 Q. Okay. And also, though, what Tricon did in 24 that same document is they increased -- they reduced the 25 amount to be supplied at the September Platts FOB price</p>	<p style="text-align: right;">197</p> <p>1 Q. So --</p> <p>2 A. -- so you are incorrect.</p> <p>3 Q. So to prevent the -- one of the drastic 4 measures that Tricon took to reduce the fixed price 5 measure or exposure was to ask KP Chem to reduce the 6 total volume that Tricon was obligated to supply KP Chem 7 from the 15,771 to now it's down to 14,000. Right?</p> <p>8 A. No. What you're saying makes zero sense and 9 the reason why is because these are all sales. So any 10 sale that you had at that time you would want to 11 maximize.</p> <p>12 We would never want to minimize in a 13 falling market. You would want to maximize. So the 14 fact that we were changing it from 15,771 to 14,267, 15 that actually hurt us by selling less in a falling 16 market. So what you're saying is absolutely incorrect.</p> <p>17 Q. So were you not telling the truth to KP Chem?</p> <p>18 A. Not at all. Where did I not tell the truth?</p> <p>19 Q. I just asked. Are you not telling the truth 20 to KP Chem when you said we needed to take drastic 21 measures to reduce fixed priced exposure?</p> <p>22 A. Talking about what I had on the purchase side 23 versus what I had on the sales side are two different 24 things.</p> <p>25 Q. All right.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">198</p> <p>1 A. This is dealing with the sales side. 2 Q. Well, let me come back to my original question 3 on this e-mail here. Is it not true that on the Bow 4 Pride, at least as of September 3rd, Tricon would be 5 supplying close to 5,000 metric tons of mixed xylene, 6 1600 of it at 1235 a metric ton and 3400 at the 7 September price? 8 A. Again, I guess I'm not understanding your 9 question. 10 Q. Well, according to Tricon Exhibit 20, the 11 e-mail from Mr. Chang, does it not say that on the Bow 12 Pride -- that's a ship. Correct? 13 A. That's correct. 14 Q. Parcel 1, I just rounded up to 1600 so I don't 15 have to read all the numbers, but it's close to 16 1600 metric tons to be sold at 1235 a metric ton. 17 Correct? 18 A. That's right. 19 Q. And then 3400 metric tons to be sold at the 20 September price. Correct? 21 A. That's correct. 22 Q. The two of those together add up to close to 23 5,000 metric tons? 24 A. That's correct. 25 Q. Okay.</p>	<p style="text-align: right;">200</p> <p>1 A. That's correct. 2 Q. Now, this is October 1, 2008. Right? 3 A. That's correct. 4 Q. And it says, "Re: Vessel nomination for the 5 5 KT of MX." Right? 6 A. That's correct. 7 Q. Now, this is again the 5 KT of MX that is 8 being supplied to KP Chem under the CFR designation that 9 was made in August. Correct? 10 A. That's correct. 11 Q. All right. And so now what KP Chem says is -- 12 to Tricon, "Regarding your vessel nomination, I'd like 13 to check unit price and quantity for each shipment." 14 Correct? 15 A. That's correct. 16 Q. "As I know, shipments should be separated as 17 below." You see that? 18 A. Okay. 19 Q. Then it says, "Spot 1600 metric tons at 12 -- 20 at 1235 a metric ton." 21 A. That's correct. 22 Q. "And then 3400 metric tons at this September 23 price." Correct? 24 A. That's correct. 25 Q. That's 5,000 metric tons?</p>
<p style="text-align: right;">199</p> <p>1 A. And what's the question? 2 Q. That was the question. 3 A. Okay. I just didn't understand the point. 4 Q. Now -- okay. I hate to make you switch to 5 another binder, but now we're going to go to Vinmar 6 Exhibit Binder number -- and it's going to be 7 Exhibit 23. 8 Now, did the ship that was nominated to 9 deliver product to KP Chem, did that change from the Bow 10 Pride to the Crystal Sambu? 11 A. I believe so, yes. 12 Q. Okay. Now, the -- Vinmar Exhibit 23 is a 13 series of e-mails again between folks at Tricon and 14 people at KP Chem. Right? 15 A. Exhibit 23? 16 Q. Yes, sir. 17 A. Yes, it is. 18 Q. Okay. And if you'll look at Page 4 of 6, 19 which is TRI 2588. 20 JUDGE BENTON: 2596? 21 MR. LEE: TRI 2588, which is Page 4 of 6. 22 JUDGE BENTON: Got it. 23 Q. (BY MR. LEE) The e-mail at the bottom of that 24 page is from someone at KP Chem to Gigi Ren and others, 25 including you, at Tricon. Right?</p>	<p style="text-align: right;">201</p> <p>1 A. That's correct. 2 Q. And at the top of that page, Gigi at Tricon 3 confirmed both the unit price and the quantity. 4 Correct? 5 A. I don't see the unit price for the September. 6 Q. It says at the top, "We are pleased to confirm 7 below unit price and quantity." 8 A. Right. I understand. I don't see the FOB 9 Korea price mentioned anywhere. 10 Q. Okay. Well, she's certainly confirming that 11 1600 metric tons are to be delivered at 1235 a metric 12 ton. Right? 13 A. That's correct. 14 Q. And that the other 3,400 metric tons are going 15 to be delivered at the FOB Korea monthly average? 16 A. That's correct. 17 Q. All right. And you agreed to that. Correct? 18 A. That's correct. 19 Q. And that's, in fact, what was delivered to 20 KP Chem. Correct? 21 A. I believe so, yes. 22 Q. So there was 3400 metric tons delivered at the 23 contract price and 1600 metric tons delivered at the 24 1235 a metric ton? 25 A. Which was the buy-sell price we had agreed to.</p>

51 (Pages 198 to 201)

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">202</p> <p>1 Q. Now, if you look at Joint Exhibit 27.</p> <p>2 JUDGE BENTON: Joint 27?</p> <p>3 MR. LEE: Joint 27.</p> <p>4 Q. (BY MR. LEE) Now, this is the invoice that</p> <p>5 Tricon sent to KP Chem for the delivery of the contract</p> <p>6 slip?</p> <p>7 A. That's correct.</p> <p>8 Q. And just so that we're clear on this, the --</p> <p>9 where it says, "Sold To: Lotte Bussan," that was an</p> <p>10 agent of -- receiving agent for KP Chem?</p> <p>11 A. No. That's the parent company, I guess their</p> <p>12 name Lotte. It's part of the parent company so it's the</p> <p>13 same company.</p> <p>14 Q. All right. It's the same company. The name</p> <p>15 is different but it's all the same?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. And so this is -- now, we saw on the</p> <p>18 prior e-mail it was 4300 metric tons. What was actually</p> <p>19 delivered was the 3230. Correct?</p> <p>20 A. Okay.</p> <p>21 Q. Which is the -- you can do the math if you</p> <p>22 want. I've got a calculator, but it's the 5 percent --</p> <p>23 it's 3400 less 5 percent?</p> <p>24 A. Okay.</p> <p>25 Q. Is that what your understanding is?</p>	<p style="text-align: right;">204</p> <p>1 and you've already told me that, in fact, Tricon</p> <p>2 delivered 1600 metric tons of MX to KP Chem at the price</p> <p>3 of \$1235 a metric ton. Right?</p> <p>4 A. Which we also bought from KP at the same</p> <p>5 price. That's why I'm saying it doesn't matter what</p> <p>6 price you chose. If they were willing to sell us at a</p> <p>7 dollar a metric ton earlier, then we have to return it</p> <p>8 at a dollar a metric ton. If they wanted --</p> <p>9 Q. Where is that documentation?</p> <p>10 A. It was not -- it is not part of this deal.</p> <p>11 Q. We don't have any documentation showing that</p> <p>12 there was, in fact, an agreement that they would buy it</p> <p>13 back from you at the same price that you sold it?</p> <p>14 A. No. We took delivery prior to the Vinmar deal</p> <p>15 ever being done.</p> <p>16 Q. Took delivery of what?</p> <p>17 A. The sale side from KP to Tricon. This is</p> <p>18 returning the cargo at the same price.</p> <p>19 Q. But we don't have those documents, do we?</p> <p>20 A. I'm not sure whether the lawyers passed it to</p> <p>21 you.</p> <p>22 Q. You haven't seen it in any of the documents</p> <p>23 that you've looked at in preparing for this hearing,</p> <p>24 have you?</p> <p>25 A. Not today, no.</p>
<p style="text-align: right;">203</p> <p>1 A. I don't have a calculator but that seems</p> <p>2 right.</p> <p>3 Q. And that was priced at 995.50?</p> <p>4 A. That's correct.</p> <p>5 Q. For a total of 3,215,465?</p> <p>6 A. That's correct.</p> <p>7 Q. That's what Vinmar -- I mean Tricon was paid</p> <p>8 for the 3200 -- 3230 metric tons that were delivered to</p> <p>9 KP Chem?</p> <p>10 A. That's correct.</p> <p>11 Q. Now, we don't have the invoice for the</p> <p>12 delivery of the other 1600 metric tons, but it was</p> <p>13 delivered. Correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And the delivery price was 1235 a metric ton?</p> <p>16 A. That was the buy-sell price, yes.</p> <p>17 Q. Okay. And the -- we can do the math. I can</p> <p>18 give you a calculator, but if you do 1600 metric tons</p> <p>19 times 1235 a metric ton, you get 1,976,000?</p> <p>20 A. Okay.</p> <p>21 Q. You think that's right?</p> <p>22 A. I -- like I said, the buy-sell price earlier</p> <p>23 is immaterial. It could be \$1. It wouldn't really</p> <p>24 matter.</p> <p>25 Q. Well, but the fact is that there is an e-mail</p>	<p style="text-align: right;">205</p> <p>1 Q. Well, in preparing for the hearing, have you</p> <p>2 seen those documents?</p> <p>3 A. Well, of course. I was the one that did the</p> <p>4 agreement of the buy-sell.</p> <p>5 Q. Have you seen them in any of the exhibits?</p> <p>6 A. I haven't looked for them. No.</p> <p>7 Q. Didn't Tricon buy 5,000 metric tons of mixed</p> <p>8 xylenes from J & J Chemical or Chemtrading on</p> <p>9 September 22nd, 2008?</p> <p>10 A. That's correct.</p> <p>11 Q. And that's Joint Exhibit 24. Right?</p> <p>12 A. That's correct.</p> <p>13 Q. Now, this agreement with J & J Chemtrading was</p> <p>14 at least seven days after the date -- the latest date</p> <p>15 that Tricon could have purchased MX to supply the</p> <p>16 alleged deal with Vinmar. Right?</p> <p>17 A. I wasn't supplying Vinmar at this point. I</p> <p>18 was supplying KP.</p> <p>19 Q. That wasn't my question. My -- I think my</p> <p>20 question is pretty simple, Mr. Lockwood. Isn't</p> <p>21 September 22nd, 2008, seven days later than the very</p> <p>22 last day that Tricon could have purchased MX to supply</p> <p>23 to Vinmar under the alleged deal?</p> <p>24 A. Sure.</p> <p>25 Q. Okay. This purchase from J & J Chemtrading on</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">206</p> <p>1 September 22nd, 2008, the 5,000 metric tons of MX mixed 2 xylenes that Tricon bought from J & J Chemtrading was 3 actually delivered to KP Chem. Correct? 4 A. Yes, it was. 5 Q. And 3400 of those metric tons was at the 6 995.50 price. The other 1600 metric tons was to supply 7 this 1235 metric ton price. Correct? 8 A. That's correct. 9 Q. Okay. So just to be clear about this then, on 10 the 22nd of September, you on behalf of Tricon entered 11 into a deal with J & J Chemtrading to obtain 5,000 12 metric tons? 13 A. That's correct. 14 Q. That you then turned around and supplied to 15 KP Chem under the -- what you claim is a replacement 16 sale in this case? 17 A. That's correct. 18 Q. Okay. And all 5,000 metric tons that you 19 purchased from J & J Chemtrading was delivered to 20 KP Chem? 21 A. That's correct. 22 Q. All right. And 3230 or 3400 -- we can look at 23 the documents, but it's that plus or 5 -- plus or minus 24 5 percent that we get hung up on, but it's basically 25 3400 metric tons was at one price and the remainder was</p>	<p style="text-align: right;">208</p> <p>1 that sound right? 2 A. I trust your math so that's fine. 3 Q. 3,215,465. Now, we know that -- we also saw 4 where another 1600 metric tons was sold at 1235 a metric 5 ton? 6 (Brief interruption.) 7 JUDGE BENTON: Hold on a second, Mr. Lee. 8 The witness -- 9 MR. DIAZ-ARRASTIA: Yes, Your Honor. That 10 is Vuk Rajevac. And I just told him to please wait 11 outside. 12 JUDGE BENTON: He wasn't -- he hadn't been 13 in the room 30 seconds. Okay. 14 JUDGE WOOD: He was checking in. 15 Q. (BY MR. LEE) We also saw 1600 metric tons 16 were sold at 1235 a metric ton. Right? 17 A. And generally we don't refer to as sold when 18 it's a buy-sell, but the price was 1235. 19 Q. Okay. And do you think that it was 20 actually -- instead of the 1600 that you delivered it 21 was 1600 less 5 percent? 22 A. I have no idea. 23 Q. Okay. Well, we do know that the amount that 24 was bought from J & J was sent to KP Chem. Correct? 25 A. Yes.</p>
<p style="text-align: right;">207</p> <p>1 at the other price. Correct? 2 A. That's correct. 3 Q. And if you look at -- 4 JUDGE BENTON: We're off the record. 5 (Recess from 2:12 p.m. to 2:25 p.m.) 6 JUDGE BENTON: All right. Let's proceed. 7 MR. LEE: Do you mind if I stand up? I 8 want to -- 9 JUDGE BENTON: I don't mind -- 10 MR. LEE: Thank you. 11 JUDGE BENTON: -- because I've got to 12 stand up from time to time just to keep my blood going. 13 Q. (BY MR. LEE) Okay. Mr. Lockwood, I want to 14 see if we can't get a couple of these things on the -- 15 on the board. So we talked -- before we took a break, 16 we talked about Tricon's sale to KP Chem. Right? 17 A. That's correct. 18 Q. And what we saw was that the -- we had an 19 invoice for 3,230 metric tons at 995.50? 20 A. That's correct. 21 Q. Do you remember that? 22 Okay. So we did it at 995.50. Right? 23 A. That's right. 24 Q. And you can look at the invoice, but I'll 25 represent to you that the amount was 3,215,465. Does</p>	<p style="text-align: right;">209</p> <p>1 Q. Okay. And I'll -- when we get to those 2 invoices, I'll tell you I think it's 1520 so I'm going 3 to -- 4 A. Okay. 5 Q. So if you're all right -- so that's actually 6 less than the 1600. Right? 7 A. That's correct. 8 Q. And that price was 1235. 9 A. What is -- 10 Q. Right? 11 A. What is 1520 of 1600? Do you know the 12 percent? Is it minus 5? 13 Q. It's minus 5 percent. 14 A. Okay. 15 Q. I'm happy to do the math or let you do it. 16 A. I trust you. 17 Q. And that -- if I -- 18 A. That makes sense because if you add the two 19 together it's 4750, so 5,000 minus 5 percent. That 20 makes sense. 21 Q. If I do 1,520 times 1235, I get 1,877,200? 22 A. Okay. 23 Q. And would you agree with me that 1,877,200 24 plus 3,215,465 equals 5,092,665? 25 A. That looks correct.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

210	212
<p>1 Q. Okay. And so that's the almost 5,000 metric 2 tons of MX that were supplied to KP Chem in October. 3 Correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And before we broke, we were talking about 6 J & J Chemtrading. Tricon purchased 5,000 metric tons 7 from J & J Chemtrading on September 22nd, 2008, and all 8 of that volume was sent to KP Chem to supply the 3230 9 and the 1520?</p> <p>10 A. That's correct.</p> <p>11 Q. All right. Okay. So if we look at Vinmar 12 exhibit -- this is back in my Vinmar exhibit book. 13 Let's first take a look at Vinmar Exhibit 20. That's an 14 invoice that J & J Chemtrading sent to Tricon. Correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And we see here that the party that actually 17 received the material was this Lotte International, 18 which is KP Chem?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. And this is the first -- this is the 21 3,320 metric tons. Right?</p> <p>22 A. That's correct.</p> <p>23 Q. That was supplied by Tricon. You sold it to 24 KP Chem at 995.50?</p> <p>25 A. That's correct.</p>	<p>1 Q. And, again, this price was 676.63?</p> <p>2 A. That's correct.</p> <p>3 Q. And the invoice is 385 -- the invoice amount 4 is 385,707.52?</p> <p>5 A. That's correct.</p> <p>6 Q. Is that right?</p> <p>7 A. That's correct.</p> <p>8 Q. So that's 570.042 metric tons at again 676.63. 9 And this one was for 385,708 if we round up?</p> <p>10 A. That's fine.</p> <p>11 Q. Right?</p> <p>12 A. That's correct.</p> <p>13 Q. And then if we take a look at Tricon -- Vinmar 14 Exhibit No. 22, this is yet another invoice from J & J 15 Chemtrading to Tricon for the remaining balance of the 16 5,000 metric tons of mixed xylenes that Tricon had 17 purchased from J & J Chemtrading. Correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And that's -- this 950 metric tons was also 20 supplied to KP Chem?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And so if we -- so that was 950.010 23 metric tons. And, again, that price is 676.63. 24 Correct?</p> <p>25 A. That's correct.</p>
211	213
<p>1 Q. You actually purchased it from J & J 2 Chemtrading at 676.63 a metric ton. Right?</p> <p>3 A. That's correct.</p> <p>4 Q. So if we do 3,230 metric tons at -- and that 5 was 676.63. Right?</p> <p>6 A. 676.63, that's correct.</p> <p>7 Q. For a total of 2,185,515. Right?</p> <p>8 A. That's correct.</p> <p>9 JUDGE DAVIDSON: 514.90 to be exact. 10 MR. LEE: Correct.</p> <p>11 Q. (BY MR. LEE) Do you mind if I round up, 12 Mr. Lockwood?</p> <p>13 A. No problem.</p> <p>14 Q. Okay. So that's the purchase that Tricon made 15 from J & J for the first 3200 --</p> <p>16 A. That's correct.</p> <p>17 Q. -- 30 metric tons?</p> <p>18 If you take a look at the next exhibit, 19 Vinmar Exhibit 21, this is yet another invoice from 20 J & J Chemtrading to Tricon. This is for 570.042 metric 21 tons. Correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And this is part of that total 5,000 metric 24 tons that Tricon purchased from J & J. Correct?</p> <p>25 A. That's correct.</p>	<p>1 Q. For a total of 642,805 if we round -- we're 2 going to round down this time. Right?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. So if we add -- this is what -- the 5 three of these would represent what Tricon paid J & J to 6 obtain the mixed xylenes that it supplied to KP Chem as 7 the replacement sale. Right?</p> <p>8 A. That's correct.</p> <p>9 Q. So we take the 2,185,515 plus 385,708 plus 10 642,805, we get -- I get 3,214,028. Would you like to 11 check that or does that sound right?</p> <p>12 A. That sounds fine.</p> <p>13 Q. Okay. So you supplied it for \$5 million. You 14 paid 3.2 million. Correct?</p> <p>15 A. That's correct.</p> <p>16 Q. That's a million -- that's a difference of 17 1,878,637?</p> <p>18 A. That looks correct.</p> <p>19 Q. Is that right?</p> <p>20 A. It looks correct, yes.</p> <p>21 Q. Okay. That would be the amount that Tricon 22 realized on its sale to KP Chem and supplying it from 23 J & J Chemtrading. Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Now, do these numbers look right to you?</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">214</p> <p>1 A. That's correct. 2 (Vinmar Exhibit 27 marked.) 3 MR. LEE: I would offer this as Vinmar 4 Exhibit 27. 5 MR. DIAZ-ARRASTIA: The panel -- the panel 6 has seen it so I guess we'll consider it, but I will 7 point out that the profit made on the replacement sale 8 is not the measure of damages. It's totally irrelevant 9 to this case. 10 JUDGE BENTON: Okay. We understand. And 11 I'm sure we'll hear -- 12 MR. DIAZ-ARRASTIA: But I understand the 13 panel has seen it and will consider it. 14 JUDGE BENTON: Right. 15 MR. LEE: Do you mind if I write Vinmar 16 Exhibit 27 or -- 17 JUDGE BENTON: Sure. It's your exhibit. 18 MR. LEE: Okay. 19 Q. (BY MR. LEE) Now, if we take the -- as I 20 understand the claim here, Tricon says it sold 5,000 21 metric tons of mixed xylenes to Vinmar at 1310 a metric 22 ton? 23 A. That's correct. 24 Q. And I believe that Mr. Matthews will testify 25 that he's going to increase the amount of mixed xylenes</p>	<p style="text-align: right;">216</p> <p>1 A. That's correct. 2 Q. And you looked at some MX pricing data from 3 Platts, I believe, earlier today. And I think that is 4 Tricon Exhibit 32. 5 A. Okay. 6 Q. And it's your testimony that the -- Tricon 7 Exhibit 32 presents evidence of the market price for 8 mixed xylenes during the relevant time period? 9 A. That's correct. 10 Q. And we're going to look at dates I guess 11 really from -- the claim is that the deal was done on 12 July the 22nd, 2008. Correct? 13 A. That's correct. 14 Q. And it's your testimony that if you were 15 feeling really risky you could have waited all the way 16 to September 15th, 2008, to buy the mixed xylenes to 17 supply the alleged contract. Right? 18 A. That's correct. 19 Q. So if you want to look at prices from July 20 22nd, 2008, all the way to September 15th, 2008, I think 21 you will agree with me that the lowest price that is 22 shown on Tricon Exhibit 32 would be 957.50? 23 A. Through the 15th? 24 Q. Yes. 25 A. 957.50, that looks correct, yes.</p>
<p style="text-align: right;">215</p> <p>1 by 5 percent? 2 A. That's correct. 3 Q. Now, I don't agree with that, okay, but I'm 4 going to -- we're going to use that number. 5 A. Okay. 6 Q. I just see what the numbers look like here. 7 So if we increase 5,000 metric tons by 5 percent, that's 8 another 250. Right? 9 A. Okay. 10 Q. Is that right? 11 A. It sounds right. 12 Q. So I'm just going to put Vinmar over here so 13 you and I don't get in an argument about what I call the 14 chart so we're just going to call it Vinmar. Okay? 15 A. Sure. 16 Q. And if we say 5,250 metric tons at the claim 17 price of 1310 a metric ton, that would have been -- and 18 we can do the math, but it's 6,877,500? 19 A. Okay. 20 Q. Is that -- 21 A. Sounds right. 22 Q. Do you agree with that? 23 A. I don't have a calculator but it looks right. 24 Q. And Tricon would have had to purchase MX on or 25 before September 15th, 2008, to supply Vinmar. Correct?</p>	<p style="text-align: right;">217</p> <p>1 Q. Do you agree with that? 2 A. That's correct. 3 Q. That's the lowest possible market price for 4 mixed xylenes during the period of time that Tricon 5 would have had to act to supply Vinmar? 6 A. That's correct. 7 Q. So that's 957.50. Correct? 8 A. Correct. 9 Q. So if you had purchased 5,250 metric tons to 10 supply Vinmar -- you had to buy it. Right? 11 A. Right. 12 Q. And you had purchased it at the lowest 13 possible price during that period of time -- 14 A. Lowest published price. There's a difference. 15 Q. Okay. Well, the lowest price that's available 16 to the panel, you've testified that these are 17 the records of market pricing of mixed xylenes? 18 A. This is where Platts assesses the market at. 19 It's not necessarily what deals can be done. 20 Q. Do you not agree with this data? 21 A. I agree this is Platts data, no doubt, but I'm 22 saying deals don't necessarily transact at what they 23 assess the market at. 24 Q. Is it your testimony that Tricon Exhibit 32 25 does not reflect the market price of mixed xylenes</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">218</p> <p>1 during the relevant time period?</p> <p>2 A. No. This definitely reflects the market.</p> <p>3 Q. Okay. So the --</p> <p>4 A. In theory I could have bought cheaper is all</p> <p>5 I'm saying.</p> <p>6 Q. Well, the data that we have in front of us</p> <p>7 reflects a market price -- the lowest possible market</p> <p>8 price for mixed xylenes during this period of time at</p> <p>9 957.50. Correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And so if Tricon had purchased mixed xylenes</p> <p>12 to supply Vinmar -- and I'm going to give you the lowest</p> <p>13 price. According to the data you have, that would have</p> <p>14 been 5,250 metric tons times 957.50. Right?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And I'll show you. My calculator says that's</p> <p>17 5,026,875.</p> <p>18 A. Okay.</p> <p>19 Q. Do you agree with that?</p> <p>20 A. Yes.</p> <p>21 Q. So if we just take what the sale price was</p> <p>22 according to Tricon and we subtract what -- the</p> <p>23 possibility of what it might cost to obtain the mixed</p> <p>24 xylenes to supply here, we get a profit of -- or a</p> <p>25 difference of 1,850,625?</p>	<p style="text-align: right;">220</p> <p>1 JUDGE WOOD: He's marking the sheets of</p> <p>2 paper and we all see that --</p> <p>3 MR. DIAZ-ARRASTIA: I understand that.</p> <p>4 JUDGE WOOD: And that's helpful so we can</p> <p>5 refer back to it later.</p> <p>6 THE WITNESS: Would the --</p> <p>7 JUDGE BENTON: Yes, sir.</p> <p>8 THE WITNESS: When he is done, would the</p> <p>9 panel allow me to draw some things on a piece of paper</p> <p>10 as well?</p> <p>11 JUDGE DAVIDSON: No, but I'll let you come</p> <p>12 up --</p> <p>13 JUDGE WOOD: I think your lawyer --</p> <p>14 JUDGE DAVIDSON: I think we'll let you</p> <p>15 have your own piece of paper that you can start with a</p> <p>16 blank piece of paper and you can copy everything he</p> <p>17 wrote and then you can write whatever you want on your</p> <p>18 piece of paper.</p> <p>19 THE WITNESS: Just tell me when I'm --</p> <p>20 JUDGE WOOD: Your lawyer will let you do</p> <p>21 it.</p> <p>22 THE WITNESS: Tell me when I'm allowed to</p> <p>23 do that.</p> <p>24 JUDGE DAVIDSON: I shall. We'll let --</p> <p>25 JUDGE BENTON: Mr. Diaz-Arrastia will lead</p>
<p style="text-align: right;">219</p> <p>1 A. Okay.</p> <p>2 Q. Is that -- do you agree with that?</p> <p>3 A. I do.</p> <p>4 Q. And do you agree this is a possible -- this is</p> <p>5 representative of a possible scenario that Tricon could</p> <p>6 have employed to supply this alleged deal with Vinmar?</p> <p>7 A. Definitely possible.</p> <p>8 Q. Okay. I would move for -- hang on. Let me</p> <p>9 figure out what number I'm on.</p> <p>10 (Vinmar Exhibit 28 marked.)</p> <p>11 MR. LEE: I would move for admission of</p> <p>12 this document as Vinmar Exhibit 28.</p> <p>13 JUDGE BENTON: Okay.</p> <p>14 MR. DIAZ-ARRASTIA: The panel has seen it</p> <p>15 and will consider it, but it is an irrelevant issue.</p> <p>16 JUDGE WOOD: It's helpful to put that</p> <p>17 number on these exhibits that have gone into the record.</p> <p>18 MR. DIAZ-ARRASTIA: Let me --</p> <p>19 JUDGE WOOD: It's helpful to put those</p> <p>20 exhibit numbers on there.</p> <p>21 JUDGE BENTON: By the measure of</p> <p>22 damages --</p> <p>23 MR. DIAZ-ARRASTIA: My point is that the</p> <p>24 UCC tells us how you measure the damages in a situation</p> <p>25 like this and it is not by comparing the profits.</p>	<p style="text-align: right;">221</p> <p>1 you to --</p> <p>2 JUDGE WOOD: He'll let you know.</p> <p>3 JUDGE BENTON: He'll guide you through.</p> <p>4 JUDGE WOOD: Okay. We've got that marked.</p> <p>5 MR. LEE: Okay. Thank you.</p> <p>6 Q. (BY MR. LEE) And, Mr. Lockwood --</p> <p>7 JUDGE BENTON: What's that movie?</p> <p>8 Everything that guy said, I disagree with.</p> <p>9 JUDGE DAVIDSON: No, no, that isn't what</p> <p>10 the line from the movie was.</p> <p>11 JUDGE BENTON: Yeah.</p> <p>12 MR. LEE: Okay. I watch that movie before</p> <p>13 I try every case. I love it.</p> <p>14 JUDGE WOOD: We love it.</p> <p>15 JUDGE BENTON: I got the line wrong, but</p> <p>16 that's okay.</p> <p>17 Q. (BY MR. LEE) So if we -- if we just compare</p> <p>18 the numbers that we came up with on Vinmar Exhibit 27,</p> <p>19 we've got a million 878,637. Right?</p> <p>20 A. That's correct.</p> <p>21 Q. On the sale to KP Chem and the purchase from</p> <p>22 J & J.</p> <p>23 On what you've agreed is a representative</p> <p>24 example of how Tricon could have supplied this alleged</p> <p>25 deal, we show 1 million 850. Correct?</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">222</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. So this number on Exhibit 27 is greater</p> <p>3 than the number on Exhibit 28. Correct?</p> <p>4 A. Correct.</p> <p>5 MR. LEE: Pass the witness.</p> <p>6 JUDGE BENTON: Mr. Diaz-Arrastia?</p> <p>7 MR. DIAZ-ARRASTIA: Thank you.</p> <p>8 JUDGE BENTON: Any redirect?</p> <p>9 MR. DIAZ-ARRASTIA: Yes, there is, brief.</p> <p>10 REDIRECT EXAMINATION (2:45 p.m.)</p> <p>11 BY MR. DIAZ-ARRASTIA:</p> <p>12 Q. Mr. Lockwood, first let me ask you this. The</p> <p>13 KP Chem sale, was that pursuant to a long-term contract?</p> <p>14 A. The September FOB Korea average?</p> <p>15 Q. Yes.</p> <p>16 A. Yes, it was.</p> <p>17 Q. And that was a contract where Tricon had the</p> <p>18 option to compel KP to purchase. Correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. And I think you testified earlier that</p> <p>21 given the conditions on the market Tricon could have</p> <p>22 easily supplied both the KP contract and the Vinmar</p> <p>23 contract?</p> <p>24 A. As many sales as I could make I could find</p> <p>25 product to cover it.</p>	<p style="text-align: right;">224</p> <p>1 can borrow?</p> <p>2 JUDGE WOOD: I've got one.</p> <p>3 MR. DIAZ-ARRASTIA: You know, my --</p> <p>4 JUDGE WOOD: No. I've got one if I have</p> <p>5 it with me.</p> <p>6 MR. DIAZ-ARRASTIA: The BlackBerry has a</p> <p>7 calculator. I'll be happy to run the numbers.</p> <p>8 JUDGE WOOD: And I think it will turn on</p> <p>9 when you punch a button or something.</p> <p>10 THE WITNESS: Okay. Thank you.</p> <p>11 JUDGE BENTON: Yeah. Don't write on --</p> <p>12 THE WITNESS: I'm not going to write on</p> <p>13 that one. Don't worry.</p> <p>14 What your -- what my counsel was saying I</p> <p>15 think is exactly correct. The one thing that I would</p> <p>16 point out is that you can't consider the 1235 price</p> <p>17 because, like I said, it could have been one dollar a</p> <p>18 metric ton.</p> <p>19 So the fact that I was only able to</p> <p>20 deliver 3230 at 995 and a half, I think what we have to</p> <p>21 do is say 3230 at 995 and a half, subtract the 3230 I</p> <p>22 bought from J & J at 676.63. 995.5 minus 676.3 times</p> <p>23 3230 equals 1,031,016.</p> <p>24 Then, as my counsel suggested, if Vinmar</p> <p>25 had performed, 1310 per metric ton minus 5250 at 957.50,</p>
<p style="text-align: right;">223</p> <p>1 Q. If Vinmar had performed on this contract,</p> <p>2 would Tricon have been able to make both the KP sale and</p> <p>3 the Vinmar sale?</p> <p>4 A. Definitely, and that's what I wanted to be</p> <p>5 able to have the opportunity to write on a piece of</p> <p>6 paper.</p> <p>7 Q. Okay. And you'll get that opportunity in a</p> <p>8 moment, but if I could approach the panel. What that</p> <p>9 means -- the board. What that means is that if Vinmar</p> <p>10 had performed on its contract Tricon would have made</p> <p>11 both the 1.878 million dollars that it made with KP and</p> <p>12 the 1.85625 that it could have made on the Vinmar sale</p> <p>13 under a potential scenario if they had performed?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Now, you wanted to write something on</p> <p>16 the board and I'm not sure what that was, but I'll</p> <p>17 invite you to do that.</p> <p>18 THE WITNESS: Okay. Could I borrow your</p> <p>19 calculator? Does anybody --</p> <p>20 JUDGE WOOD: But not -- as Judge Davidson</p> <p>21 said, not on that piece of paper.</p> <p>22 JUDGE DAVIDSON: Not on their board. He</p> <p>23 can start with a fresh piece of paper and write anything</p> <p>24 he wants.</p> <p>25 THE WITNESS: Do you have a calculator I</p>	<p style="text-align: right;">225</p> <p>1 so 1310 minus 99 -- or excuse me. 1310 minus 957.5</p> <p>2 times 5,250, 1,850,625.</p> <p>3 Adding that to the number up above plus</p> <p>4 1,031,016, what my counsel was saying was accurate</p> <p>5 except for the fact that I don't think it's fair to</p> <p>6 include the buy-sell because had I included the buy-sell</p> <p>7 it could have been at one million dollars a metric ton,</p> <p>8 which would greatly overstate the damages. Or if I had</p> <p>9 bought it at -- if I had sold it at \$1 a metric ton, the</p> <p>10 damages would be a lot more.</p> <p>11 So the point is you can only really</p> <p>12 consider what I was able to deliver against the contract</p> <p>13 price versus what I bought. Here's how much I could</p> <p>14 have made in addition to this amount right here had</p> <p>15 Vinmar performed. So you add the two together. It's</p> <p>16 2,881,641 that could have been possibly made. Thank you</p> <p>17 very much.</p> <p>18 Q. (BY MR. DIAZ-ARRASTIA) And, Mr. Lockwood, we</p> <p>19 talked a lot about KP's request or demand for a</p> <p>20 reduction of their volume?</p> <p>21 A. That's correct.</p> <p>22 Q. Now, you have seen the damage calculation of</p> <p>23 Chuck Matthews prepared, have you not?</p> <p>24 A. That's correct.</p> <p>25 Q. And that's in the report that Mr. Matthews --</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">226</p> <p>1 that's what we submitted to the panel and he can talk 2 about it later in this hearing. Do you know what was 3 the effect on the measure of damages for Tricon of the 4 reduction of the KP volume? 5 A. It hurt very bad. 6 Q. Okay. It reduced the damages. Correct, sir? 7 A. You're saying -- 8 Q. Because KP Chemicals did not take the 5,000 9 they were obligated to take under the contract, did that 10 increase or decrease our measure of damages in this 11 case? It decreased it, did it not? 12 A. Can you rephrase the question? I'm sorry. 13 Q. My question to you was, what was the 14 consequence on the damages measured by Mr. Matthews for 15 Tricon in this case of the fact that KP only took 3220 16 metric tons? 17 A. Yeah. That hurt. That hurt Tricon, yeah. 18 Q. It reduced the damages that we could claim? 19 A. That's correct. 20 JUDGE DAVIDSON: Well, wait a minute. If 21 it reduced the damages you can claim, then it helped 22 Tricon. 23 JUDGE WOOD: No. It helped Vinmar. 24 MR. DIAZ-ARRASTIA: No. If -- no, no. If 25 KP had taken the entire 5,000 our measure of damages</p>	<p style="text-align: right;">228</p> <p>1 buy-sell? 2 A. That is correct. 3 Q. And that is why it does reflect an accurate 4 market price? 5 A. That's correct. 6 Q. Okay. It also says that that's a spot deal. 7 Correct? 8 A. That's what his word was, yes. 9 Q. And can you tell me, when was the deal, the 10 sale involving those 1600 metric tons made? 11 A. Prior to the Vinmar transaction. 12 Q. Okay. Which is the reason why the price was 13 high? 14 A. That's right. 15 Q. Go to Joint Exhibit 21. It's the -- 16 JUDGE WOOD: 21? 17 MR. DIAZ-ARRASTIA: Joint Exhibit 21. 18 Q. (BY MR. DIAZ-ARRASTIA) And Mr. Lee made -- 19 asked you questions about Joint Exhibit 22 and just 20 where -- I think that's correct if I'm looking at the 21 correct right book. Yeah. 22 Mr. Lee also asked you questions about 23 Joint Exhibit 22 where -- is where you notified KP that 24 you were going to sell them their 5,000 metric tons in 25 the month of September?</p>
<p style="text-align: right;">227</p> <p>1 calculation would have been a larger number. 2 JUDGE DAVIDSON: Right, because your 3 damages weren't as great. 4 MS. LARSON: No, but we would have made 5 both sets. 6 MR. DIAZ-ARRASTIA: No, but we would have 7 made both sets. 8 JUDGE DAVIDSON: Okay. 9 MR. DIAZ-ARRASTIA: You'll see that when 10 Mr. Matthews testifies. 11 Q. (BY MR. DIAZ-ARRASTIA) Could you -- let's 12 take a look at Vinmar 23. And let's see. Let's go down 13 a little bit. Right there. A couple of pages further. 14 At this point here. 15 JUDGE DAVIDSON: What exhibit? 16 MR. DIAZ-ARRASTIA: Vinmar 23. 17 Q. (BY MR. DIAZ-ARRASTIA) Okay. Mr. Lockwood, 18 looking at Vinmar 23, Mr. Lee asked you a lot of 19 questions about this specific with regard to the 1600 20 metric tons? 21 A. That's correct. 22 Q. Okay. And the price for those 1600 metric 23 tons were 1235 per metric ton. Correct? 24 A. That's correct. 25 Q. And your testimony has been that that was a</p>	<p style="text-align: right;">229</p> <p>1 A. That's correct. 2 Q. But, now, Joint Exhibit -- and Mr. Lee asked 3 you whether Vinmar had been given a copy of that and 4 they had not. Correct? 5 A. That's what he said, yes. 6 Q. Now, Joint Exhibit 23 is where Mr. Rajevac 7 tells Mr. Wilson that if they don't perform the material 8 will be resold on the open market? 9 A. That's correct. 10 Q. That is notice of intent to resell. Correct? 11 A. That is correct. 12 Q. And if we scroll up to the e-mail that you 13 sent to Mr. Antonvich later that same day, you again 14 tell Mr. Antonvich that if Vinmar does not perform 15 Tricon intends to resell. 16 A. That's correct. 17 Q. And these e-mails were sent to Vinmar? 18 A. That's correct. 19 Q. Go to Joint Exhibit No. 10, please. And if -- 20 let's go to the page that is MOAB 13. These are instant 21 messages between you and Mr. Leyman? 22 A. That's correct. 23 Q. And since this is indicated as a MOAB 24 document, is it your understanding that that's a 25 document that was produced by Mr. Leyman?</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

230	232
<p>1 A. Yes.</p> <p>2 Q. So these are his records?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. Take a look at 1:15:27 p.m.</p> <p>5 MR. DIAZ-ARRASTIA: Can you focus in on</p> <p>6 that, please?</p> <p>7 A. What exhibit -- what exhibit are we on?</p> <p>8 Q. (BY MR. DIAZ-ARRASTIA) It is Joint Exhibit</p> <p>9 No. 10, Page MOAB 13 --</p> <p>10 A. Okay.</p> <p>11 Q. -- which is just a few pages in.</p> <p>12 A. Okay.</p> <p>13 Q. 1:15:27 p.m.</p> <p>14 A. That's correct.</p> <p>15 Q. Can you see where Mr. Leyman is telling you,</p> <p>16 "You have a problem with Vinmar"?</p> <p>17 A. Yes.</p> <p>18 Q. Is this where Mr. Wilson -- where Mr. Leyman</p> <p>19 told you that Mr. Wilson had informed him that he</p> <p>20 required U.S. origin?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Now, Mr. Leyman's office is in</p> <p>23 Connecticut. Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. So his IM records would reflect eastern time.</p>	<p>1 Exhibit No. 14. And that is the e-mail -- that is the</p> <p>2 e-mail where Mr. Rajevac informs Mr. Pascu that Asian</p> <p>3 origin might be supplied?</p> <p>4 A. I think you're wrong again. I think it's 15.</p> <p>5 Q. No. It's -- no. It's 14?</p> <p>6 MS. LARSON: No. 3.</p> <p>7 A. 14?</p> <p>8 Q. (BY MR. DIAZ-ARRASTIA) 14.</p> <p>9 A. Vinmar what at the bottom?</p> <p>10 Q. Right. Vuk Rajevac to Laurentiu Pascu on</p> <p>11 July 29th, 2008. Are you in the Joint Exhibit book?</p> <p>12 A. Okay. Yeah, I'm in the Joint Exhibit book.</p> <p>13 Q. Okay.</p> <p>14 A. On No. 009 at the bottom?</p> <p>15 Q. 009 at the bottom.</p> <p>16 A. Okay. Yes. I'm on No. 3 at the bottom.</p> <p>17 Q. That's right.</p> <p>18 A. Okay. I see it.</p> <p>19 Q. Okay. You see that. And during Mr. Lee's</p> <p>20 questioning, he pointed out that on top of that there is</p> <p>21 an e-mail from Mr. Pascu to Mr. Wilson forwarding</p> <p>22 Mr. Rajevac's e-mail?</p> <p>23 A. That's correct.</p> <p>24 Q. And I think your testimony was that we do not</p> <p>25 know when Mr. Rajevac -- when Mr. Pascu would have</p>
231	233
<p>1 Correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Now, let's look at Joint Exhibit</p> <p>4 No. 15. And this is where we have an e-mail that</p> <p>5 Mr. Wilson is telling Mr. Rajevac, "We must have" -- no,</p> <p>6 that's not the one I want. Excuse me.</p> <p>7 MR. DIAZ-ARRASTIA: Which is the one --</p> <p>8 no. I'm looking for the one where Laurentiu forwards</p> <p>9 Wilson --</p> <p>10 THE WITNESS: Exhibit 13?</p> <p>11 MR. DIAZ-ARRASTIA: Hold on a second. No,</p> <p>12 this isn't the one.</p> <p>13 (Brief discussion off the record.)</p> <p>14 MR. DIAZ-ARRASTIA: Excuse me a moment.</p> <p>15 I'm looking for another exhibit.</p> <p>16 Q. (BY MR. DIAZ-ARRASTIA) That's right. Joint</p> <p>17 Exhibit 13. Excuse me. And this is the e-mail where</p> <p>18 Mr. Rajevac tells Mr. Pascu that Asian origin might be</p> <p>19 supplied. Correct?</p> <p>20 A. Which e-mail are you referring to?</p> <p>21 Q. Joint Exhibit No. 13. No, this isn't it</p> <p>22 either.</p> <p>23 A. That's not it.</p> <p>24 Q. Where is that? Oh, here it is. It's Joint</p> <p>25 Exhibit 14. I apologize. I apologize. It's Joint</p>	<p>1 informed Wilson of Pascu's comments?</p> <p>2 A. That's correct.</p> <p>3 Q. Let me ask you something, Mr. Lockwood. If</p> <p>4 the operations specialist learned of something that was</p> <p>5 considered a critical term of your deal, how long should</p> <p>6 it take for them to report that to the trader?</p> <p>7 MR. LEE: Objection. Calls for</p> <p>8 speculation.</p> <p>9 JUDGE BENTON: It's overruled.</p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) What do you do -- what</p> <p>11 do you do within Tricon?</p> <p>12 A. Within two seconds.</p> <p>13 Q. Okay. And let me point out to you the e-mail</p> <p>14 to -- Mr. Pascu sent to Mr. Wilson. Let's look at the</p> <p>15 date on that. It was July 31st, 2008, at 1:39 p.m.</p> <p>16 Correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Now, at 1:00 -- and that would be central time</p> <p>19 because both Vinmar and Tricon are located in Houston.</p> <p>20 Right?</p> <p>21 A. That's correct.</p> <p>22 Q. If we go back to Joint Exhibit 10, MOAB 13,</p> <p>23 where we were earlier, Mr. Leyman is telling you that</p> <p>24 you have a problem regarding origin at 1:15:27 p.m.</p> <p>25 eastern time --</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">234</p> <p>1 A. That's correct. 2 Q. -- on the same day? 3 A. That's correct. 4 Q. So Mr. Wilson had told Mr. Leyman that he 5 wanted U.S. origin and Mr. Leyman had told it to you 6 about an hour and 15 minutes before Mr. Pascu forwarded 7 Mr. Rajevac's e-mail to Mr. Wilson? 8 A. That's very surprising that you point that 9 out, but, yes, you're correct. 10 Q. So there's no way that Mr. Wilson first found 11 out about Mr. Rajevac's communication at 1:39 p.m. 12 central time on July 31st? 13 A. You're exactly right. 14 (The time is 3:03 p.m.) 15 MR. DIAZ-ARRASTIA: I pass the witness. 16 JUDGE BENTON: Mr. Lee, anything else for 17 Mr. Lockwood? 18 MR. LEE: I don't think so. 19 JUDGE BENTON: Okay. You may step down, 20 Mr. Lockwood. 21 Call your next witness, Mr. Diaz-Arrastia. 22 MR. DIAZ-ARRASTIA: The next witness is 23 going to be Ed Leyman who will be presented through 24 video. 25 JUDGE BENTON: Okay. How long is that?</p>	<p style="text-align: right;">236</p> <p>1 the witness and it has the exhibit numbers behind it? 2 MR. DIAZ-ARRASTIA: Correct. The -- 3 JUDGE WOOD: These have the second 4 witness -- 5 MR. DIAZ-ARRASTIA: That's correct. 6 JUDGE WOOD: -- and it has the exhibits 7 behind it. 8 MR. DIAZ-ARRASTIA: There will be three 9 witnesses who will be presented by video. 10 JUDGE BENTON: Okay. 11 MR. DIAZ-ARRASTIA: A should be 12 Mr. Leyman's deposition and you'll have both the 13 transcript of the deposition I think with the cuts 14 marked in it and then the exhibits will be numbered as 15 they were referred to in the deposition. 16 JUDGE BENTON: Okay. 17 MR. LEE: And if I could make one other 18 comment about the depositions. What we have done is we 19 exchanged designations and agreed that it would be a lot 20 easier for everyone involved if we just play it all the 21 way through from beginning to end so this would include 22 our offer of Mr. Leyman's testimony as well. 23 MR. DIAZ-ARRASTIA: That is correct. 24 MR. LEE: I think we've got it all right. 25 There may be a glitch here and there, but I think</p>
<p style="text-align: right;">235</p> <p>1 MR. DIAZ-ARRASTIA: It's an hour and two 2 minutes. 3 JUDGE BENTON: Okay. Let's see here. 4 JUDGE DAVIDSON: Why don't we watch it for 5 a half an hour since we're used to watching television 6 in half-hour segments and then take a break and then 7 watch the last part. 8 MR. DIAZ-ARRASTIA: And something to 9 inform the panel. We ended up with different exhibit 10 numbers in the depositions than in the books that we 11 have been referring to so far. 12 What we have tried to do to resolve that 13 is you also have a book in front of you that has each 14 deposition transcript with the exhibits attached as 15 numbered in the depositions. So if you would follow in 16 that, that would help. Have y'all -- have y'all found 17 that? 18 JUDGE BENTON: That's nice to know. 19 MR. LEE: I don't think we need to take -- 20 JUDGE BENTON: About a half hour. 21 MR. LEE: -- have her take it down. Do 22 we? 23 MR. DIAZ-ARRASTIA: Well, we have a 24 transcript. 25 JUDGE WOOD: So the A's have the -- one on</p>	<p style="text-align: right;">237</p> <p>1 that -- 2 MR. DIAZ-ARRASTIA: We -- mistakes can 3 always be made, but they have been reviewed by several 4 eyes. 5 MR. LEE: Yes. And we took out the 6 objections. I don't know that it makes a whole lot of 7 sense for us to interrupt for objections. I think that 8 the panel is all experienced lawyers and judges and 9 understands -- 10 JUDGE WOOD: Thank y'all so much. 11 MR. LEE: I don't think you need to take 12 it down. We have -- 13 JUDGE DAVIDSON: We have this. 14 JUDGE WOOD: Sometimes the reporters like 15 to go ahead and take it down if they're going to have to 16 type it later and it just depends on your preference. 17 Because if you have to prepare this, you will have to 18 include this. 19 JUDGE DAVIDSON: Yeah, but if you have -- 20 if this is on a disk, all you've got to give her is the 21 disk and she can go -- 22 JUDGE WOOD: This is true. 23 JUDGE DAVIDSON: -- copy, paste, insert. 24 MR. LEE: Yeah. 25 THE REPORTER: It's up to y'all.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">238</p> <p>1 MR. DIAZ-ARRASTIA: It is not necessary 2 for you to write it down. 3 (At this time the edited version of the 4 videotaped deposition of Richard Leyman that was 5 originally taken on April 29, 2010, was played in the 6 arbitration. The court reporter at the arbitration 7 reported such proceedings and this is her transcription 8 of same.) 9 MR. LEE: George, before you get started, 10 I have just an objection for the record. 11 Vinmar is participating in this deposition 12 subject to and without waiver of its continuing 13 objection to Triple A's jurisdiction in this case. As 14 we've made it clear, we don't think there's an 15 arbitration agreement, but -- so our participation is 16 subject to and without waiver of that objection. 17 RICHARD LEYMAN, 18 having been first duly sworn, testified as follows: 19 EXAMINATION 20 BY MR. DIAZ-ARRASTIA: 21 Q. Could you state your full name for the record, 22 please? 23 A. It's Edward Leyman. 24 Q. Okay. Mr. Leyman, I am George Diaz-Arrastia. 25 I am the lawyer that represents Tricon in this case.</p>	<p style="text-align: right;">240</p> <p>1 with MOAB Oil. 2 Q. Your company has a contract with MOAB Oil? 3 A. Yes. 4 Q. And basically it involves that you broker 5 deals and you get commissions, that sort of thing? 6 A. Yes. And they provide telephone service, 7 computer service, administrative service. 8 Q. How would you describe what you do with MOAB? 9 A. Brokering is bringing a buyer and seller 10 together. My area of specialty is petrochemicals and 11 gasoline blend stocks. There are other people in MOAB 12 that do other products. I speak to potential buyers, 13 potential sellers, and then negotiate an agreement where 14 one purchases a product from the other. 15 Q. Okay. It would be fair to say that what you 16 do -- your mode of employment is that you broker deals 17 in petrochemicals and gas blend stocks? 18 A. Yes. 19 Q. And how long have you been doing that, sir? 20 A. I've been doing it for over 20 years. 21 Q. And before that July 22nd, 2008, deal, had you 22 brokered deals with Tricon before? 23 A. Yes. 24 Q. Many? A few? 25 A. I don't know how to best answer that.</p>
<p style="text-align: right;">239</p> <p>1 Now, have you and I ever met before today? 2 A. No. 3 Q. Have we ever had any conversations? 4 A. No. 5 Q. I think that you have had one telephone 6 conversation with a lawyer in my office called Christi 7 Guerrini. Do you recall that? 8 A. I believe so. I'm not sure. I think she 9 called to see -- well, let me rephrase that. No, I 10 don't really -- 11 Q. Do you -- 12 A. I really don't remember her calling, but I 13 assume she did because she made contact with John. 14 Q. Okay. Have you ever spoken with Mr. Lee? 15 A. No. 16 Q. Have you ever spoken with anyone in his 17 office? 18 A. No. 19 Q. Sir, how long have you been employed by MOAB, 20 Inc.? 21 A. I've been associated with MOAB for 22 approximately six years. 23 Q. You say you're associated with MOAB. What's 24 the nature of that association? 25 A. I have my own company, and it's associated</p>	<p style="text-align: right;">241</p> <p>1 Q. Okay. Had you also brokered deals with 2 Vinmar? 3 A. Yes. 4 Q. With what -- 5 A. My answer -- I guess a less frequent number of 6 deals with Vinmar than with Tricon. 7 Q. Okay. Before July 22, 2008, did you know Brad 8 Lockwood? 9 A. Yes. 10 Q. Did you also know Rick Wilson before -- 11 A. Yes. 12 Q. -- July 22, 2008? 13 Had you brokered deals with both of them 14 before July 22, 2008? 15 A. Yes. 16 Q. And I guess the way that you knew them is 17 through brokering deals. Would that be correct? 18 A. Yes. 19 Q. It was not a personal friendship? You knew 20 them in your business? 21 A. Yes. 22 Q. And what is your educational background, sir? 23 How far did you get in school? 24 A. I have a degree in chemical engineering and an 25 MBA in marketing.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">242</p> <p>1 Q. And when did you get your chem-E degree?</p> <p>2 A. 1967.</p> <p>3 Q. Where did you get it?</p> <p>4 A. New York University School of Engineering.</p> <p>5 Q. And your MBA, when did you get that?</p> <p>6 A. Approximately 1972.</p> <p>7 Q. And what institution granted it?</p> <p>8 A. And it was Iona College.</p> <p>9 Q. Sir, is there a -- is it common or customary</p> <p>10 in your industry for the parties in a commodity</p> <p>11 transaction of this kind, like mixed xylene, not to</p> <p>12 speak directly with each other, but to have their</p> <p>13 communications happen through a broker such as yourself?</p> <p>14 A. Both are common. Some companies deal directly</p> <p>15 with each other. Others deal through brokers.</p> <p>16 Q. When a broker is involved in the transaction,</p> <p>17 is it common for the communications to always be through</p> <p>18 the broker instead of directly between the buyer and</p> <p>19 seller?</p> <p>20 A. Yes.</p> <p>21 Q. Is that what happened in the transaction</p> <p>22 regarding mixed xylene on July 22nd, 2008, between</p> <p>23 Vinmar and Tricon?</p> <p>24 A. Yes. When the deal was negotiated on</p> <p>25 July 22nd, I was speaking to both parties and, to my</p>	<p style="text-align: right;">244</p> <p>1 Lockwood at Tricon.</p> <p>2 Q. Okay. I guess what I'm trying to find out is</p> <p>3 what is -- what do you mean when you use the words "firm</p> <p>4 bid"?</p> <p>5 A. That means it is a commitment in this case by</p> <p>6 the buyer. It's not an indication. In the brokering</p> <p>7 business, you can get an indication, which is just, as</p> <p>8 stated, an indication. I'd like to buy this product at</p> <p>9 this price, but there's no firm commitment to do so. A</p> <p>10 firm bid is that firm commitment to do so.</p> <p>11 Q. So it would be fair to say that a firm bid is,</p> <p>12 "If these terms are met, we have a deal"?</p> <p>13 A. Yes.</p> <p>14 Q. Did Rick Wilson give you authority to</p> <p>15 communicate that firm bid to Brad Lockwood at Tricon?</p> <p>16 A. Yes.</p> <p>17 Q. And he gave that to you over the telephone?</p> <p>18 A. Yes.</p> <p>19 Q. And did you also have authority from Brad</p> <p>20 Lockwood and Tricon to communicate with Rick Wilson --</p> <p>21 A. Yes.</p> <p>22 Q. -- at Vinmar?</p> <p>23 And how did Brad give you that authority?</p> <p>24 A. Brad gave me a firm offer on mixed xylenes,</p> <p>25 again specifying quantity, quality, delivery time,</p>
<p style="text-align: right;">243</p> <p>1 knowledge, they were not speaking to each other.</p> <p>2 Q. In a transaction where the parties do not</p> <p>3 speak to each other but speak only through the broker,</p> <p>4 does the broker then communicate the terms of the deal</p> <p>5 to each of the parties?</p> <p>6 A. Yes.</p> <p>7 Q. And does the broker have authority from each</p> <p>8 of the parties to do that?</p> <p>9 A. Yes.</p> <p>10 Q. In the July 22nd, 2008, transaction between</p> <p>11 Tricon and Vinmar, did you have authority from Rick</p> <p>12 Wilson and Vinmar to communicate with Tricon and Brad</p> <p>13 Lockwood?</p> <p>14 A. Yes.</p> <p>15 Q. How did you get that authority?</p> <p>16 A. Mr. Wilson gave me a firm bid over the phone</p> <p>17 to purchase the mixed xylenes.</p> <p>18 Q. So it was given to you over the telephone?</p> <p>19 A. Yes.</p> <p>20 Q. And when you say that Mr. Wilson gave you a</p> <p>21 firm bid, what does that mean?</p> <p>22 A. He specified the product, the price, the</p> <p>23 quality, the timing of what he was looking to purchase,</p> <p>24 and all those commercial terms were incorporated in a</p> <p>25 firm bid, which I then called and showed to Brad</p>	<p style="text-align: right;">245</p> <p>1 price.</p> <p>2 Q. Was this firm offer in response to the firm</p> <p>3 bid?</p> <p>4 A. No. I think the offer came first, and then</p> <p>5 the bid was the reply to it.</p> <p>6 Q. Okay. And did Mr. Lockwood also communicate</p> <p>7 this authority to you over the telephone?</p> <p>8 A. Yes.</p> <p>9 Q. And you had authority from Mr. Lockwood to</p> <p>10 make this firm offer?</p> <p>11 A. Yes.</p> <p>12 Q. And that is a -- is that normal and typical</p> <p>13 way that you do business?</p> <p>14 A. Yes.</p> <p>15 Q. Does that, in general, describe the way you do</p> <p>16 business in all of the transactions you have done here</p> <p>17 at MOAB?</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Leyman, I'd like to call your attention to</p> <p>20 what has been marked as Exhibit No. 1 to your</p> <p>21 deposition. It is a document that was given to me by</p> <p>22 your counsel. That's why at the bottom it has the</p> <p>23 legend MOAB. And this document begins with MOAB No. 4</p> <p>24 and ends with MOAB No. 14. Do you see that, sir?</p> <p>25 A. Yes.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">246</p> <p>1 Q. Do you recognize what this document is?</p> <p>2 A. It's the IM communication between myself and</p> <p>3 Brad Lockwood.</p> <p>4 Q. Okay. And on top of the first page, it</p> <p>5 says, "Brad Lockwood." And that would indicate that</p> <p>6 these were communications with Mr. Lockwood?</p> <p>7 A. Yes.</p> <p>8 Q. And then right under that, there's the date</p> <p>9 7-22-08.</p> <p>10 A. Yes.</p> <p>11 Q. Do you see that, sir?</p> <p>12 A. Yes.</p> <p>13 Q. And does that indicate that these are instant</p> <p>14 messages between you and Mr. Lockwood that took place on</p> <p>15 July 22, 2008?</p> <p>16 A. Yes.</p> <p>17 Q. If you would turn to the page -- to MOAB 5 and</p> <p>18 go towards the bottom of the page, really the last line</p> <p>19 on that page, which says "10:48:31 a.m." Do you see</p> <p>20 that, sir?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And I suppose that that refers to this</p> <p>23 is a communication that is happening at 10:48 and 31</p> <p>24 seconds in the morning on July 22, 2008. Would that be</p> <p>25 the right way to read that?</p>	<p style="text-align: right;">248</p> <p>1 telephone discussions between you and Mr. Wilson?</p> <p>2 A. Yes.</p> <p>3 Q. If you would look at 12:09:39 where it says,</p> <p>4 "Ed." And that would be you?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So this would be a communication -- an</p> <p>7 IM communication that you sent to Mr. Lockwood at</p> <p>8 12:09:39 p.m.?</p> <p>9 A. Yes.</p> <p>10 Q. And it said, "All done but call me"?</p> <p>11 A. Yes.</p> <p>12 Q. What do you mean "All done but call me"?</p> <p>13 A. That there was an agreement of Vinmar -- with</p> <p>14 Vinmar that Tricon had made a proposal. Vinmar had</p> <p>15 countered the proposal and Brad accepted the proposal.</p> <p>16 And going back to Mr. Wilson at Vinmar, there was</p> <p>17 acceptance and a summary of all the terms and conditions</p> <p>18 being discussed by me with both parties.</p> <p>19 Q. Okay. When you say "All done," do you mean</p> <p>20 the deal is all done?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So by 12:09:39 p.m., in your mind there</p> <p>23 had been a firm offer from Tricon, Brad Lockwood, and a</p> <p>24 firm bid from Rick Wilson at Vinmar?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">247</p> <p>1 A. Yes.</p> <p>2 Q. And it is an instant message being sent to you</p> <p>3 by Mr. Lockwood?</p> <p>4 A. Yes.</p> <p>5 Q. Because it says "Brad" right after the time.</p> <p>6 Correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And it says, "I'd like to show</p> <p>9 you" -- "I'd like to show Vinmar the offer and bring in</p> <p>10 a firm bid." Do you see that, sir?</p> <p>11 A. Yes.</p> <p>12 Q. Is this when Mr. Lockwood gave you the firm</p> <p>13 offer that you talked about a moment ago? Would this --</p> <p>14 it appear to be at about this time?</p> <p>15 A. It was shortly thereafter. This particular</p> <p>16 offer was not acceptable to Vinmar because of the</p> <p>17 quality, and there was a subsequent offer made to Vinmar</p> <p>18 with a different xylene quality.</p> <p>19 Q. Okay. So at the time while there were IM</p> <p>20 discussions going on between you and Mr. Lockwood, there</p> <p>21 were also telephone discussions going on between you and</p> <p>22 Mr. Lockwood?</p> <p>23 A. Yes.</p> <p>24 Q. And at this same time, there were also IM</p> <p>25 discussions going on between you and Mr. Wilson and also</p>	<p style="text-align: right;">249</p> <p>1 Q. Let me put it to you this way. At</p> <p>2 12:09:39 p.m., had Mr. Wilson given you a firm bid to</p> <p>3 take to Tricon?</p> <p>4 A. Yes.</p> <p>5 Q. And by 12:09:39 p.m., had Mr. Wilson</p> <p>6 authorized you to make that firm bid?</p> <p>7 A. Yes.</p> <p>8 Q. And, similarly, by 12:09:39 p.m., had Brad</p> <p>9 Lockwood given you a firm offer to take to Vinmar?</p> <p>10 A. Yes.</p> <p>11 Q. And by 12:09:39 p.m., had Mr. Lockwood</p> <p>12 authorized you to communicate that firm offer to Vinmar?</p> <p>13 A. Yes.</p> <p>14 Q. You say, "But call me." Why did you want</p> <p>15 Mr. Lockwood to call you?</p> <p>16 A. To go over all the terms and conditions that</p> <p>17 both parties had just agreed to.</p> <p>18 Q. Okay. Right after the next entry from you on</p> <p>19 Exhibit 1, you say, "Vinmar is asking to declare</p> <p>20 discharge port no later than August 15th." Do you see</p> <p>21 that, sir?</p> <p>22 A. Yes.</p> <p>23 Q. What happened here?</p> <p>24 A. After the deal was negotiated, two points were</p> <p>25 not discussed during the negotiation. One was at what</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

250	252
<p>1 point does the buyer declare to the seller where he</p> <p>2 wants the product to be delivered. And Rick Wilson</p> <p>3 proposed nominating August 15th as that day of</p> <p>4 notification.</p> <p>5 Q. Okay. And, sir, if you will go down a few</p> <p>6 lines. Look at 12:39:24 p.m. "Ed."</p> <p>7 A. Yeah.</p> <p>8 Q. And there are a few lines ahead of that, and</p> <p>9 there's some back and forth on the dates for the</p> <p>10 declaration of discharge port?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. But at 12:39:24 p.m., it says, "Ed," which is</p> <p>15 you. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. It says, "Friday, the 8th, is okay"?</p> <p>18 A. Yes.</p> <p>19 Q. And just a few seconds later is it Brad</p> <p>20 saying, "Okay"?</p> <p>21 A. Yes.</p> <p>22 Q. Does this reflect an agreement on Friday, the</p> <p>23 8th of August, as the date to declare the discharge</p> <p>24 port?</p> <p>25 A. Yes.</p>	<p>1 A. Yes.</p> <p>2 Q. And that would be over the telephone; it's not</p> <p>3 reflected in the IM's?</p> <p>4 A. That's correct.</p> <p>5 Q. And Mr. Lockwood had agreed you -- had</p> <p>6 authorized you -- let me put it this way. Had</p> <p>7 Mr. Lockwood authorized you to agree on the 30-day</p> <p>8 payment period?</p> <p>9 A. Yes.</p> <p>10 Q. And had Mr. Wilson similarly authorized you to</p> <p>11 agree on the 30-day payment period?</p> <p>12 A. Yes.</p> <p>13 Q. And was it after that that Mr. Wilson</p> <p>14 said, "Can we change it to an on site LC"?</p> <p>15 A. Yes.</p> <p>16 Q. And did he authorize you to communicate that</p> <p>17 to Mr. Lockwood?</p> <p>18 A. Yes.</p> <p>19 Q. And that's what you did --</p> <p>20 A. Yes.</p> <p>21 Q. -- here in this IM?</p> <p>22 If you will go to the next page, sir, if</p> <p>23 you would look just a little below the middle of the</p> <p>24 page at 4:12:27 p.m. from Brad.</p> <p>25 A. Yes.</p>
251	253
<p>1 Q. Okay. And, again, had Mr. Lockwood authorized</p> <p>2 you to communicate to Mr. Wilson that the 8th was okay</p> <p>3 with him?</p> <p>4 A. Yes.</p> <p>5 Q. And had Mr. Wilson authorized you to</p> <p>6 communicate to Mr. Lockwood that the 8th was okay with</p> <p>7 him?</p> <p>8 A. Yes.</p> <p>9 Q. Was an agreement reached on the 8th?</p> <p>10 A. Yes.</p> <p>11 Q. Just a few lines down after that, if you look</p> <p>12 at 1:06:31 p.m., again, Ed, it says, "Vinmar asking if</p> <p>13 you are agreeable to do LC site." Do you see that, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall what that was about?</p> <p>16 A. Yes. The second point that was not negotiated</p> <p>17 initially was the payment terms. Subsequent to being</p> <p>18 all done, the parties agreed on 30 days after a bill of</p> <p>19 lading date.</p> <p>20 Subsequently Rick came back requesting</p> <p>21 that payment be made with a documentary LC, to do LC at</p> <p>22 site, and I communicated that to Brad at Tricon.</p> <p>23 Q. Okay. So there had -- there had been a</p> <p>24 discussion between you and Mr. Lockwood and you and</p> <p>25 Mr. Wilson regarding a 30-day payment period?</p>	<p>1 Q. Where it says -- again, immediately before</p> <p>2 that at 4:11:52 p.m., Ed, you, is saying, "Vinmar asking</p> <p>3 again on payment terms. LC site, question mark."</p> <p>4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Then Brad's response at 4:12:27 p.m. is that,</p> <p>7 "Yes, we accept LC at site"?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Is this where Mr. Lockwood told you,</p> <p>10 "Yes, it's okay with me to change the payment terms to a</p> <p>11 letter of credit on site"?</p> <p>12 A. Yes.</p> <p>13 Q. And did Mr. Lockwood authorize you to</p> <p>14 communicate that to Mr. Wilson?</p> <p>15 A. Yes.</p> <p>16 Q. And did you do that?</p> <p>17 A. Yes.</p> <p>18 Q. And did Mr. Wilson accept that?</p> <p>19 A. Yes.</p> <p>20 Q. Mr. Leyman, after -- is it your custom after a</p> <p>21 deal is made the way we've been talking about to send</p> <p>22 some kind of written confirmation to the parties?</p> <p>23 A. Yes.</p> <p>24 Q. Is that something you always do?</p> <p>25 A. Yes.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

254	256
<p>1 Q. I show you what's marked as Exhibit 2 to your 2 deposition, sir. Do you recognize that document? 3 A. Yes. 4 Q. Is this the confirmation that you sent on 5 July 22, 2008 -- or I should say the first confirmation 6 that you sent? 7 A. Yes. 8 Q. And this reflects the 30-day payment term that 9 was initially agreed to? 10 A. Yes. 11 Q. If you would look at the first page of 12 Exhibit 2, it appears to have been e-mailed to Rick 13 Wilson? 14 A. Okay. Yes. This would have been sent to 15 Vinmar. 16 Q. If you look at Exhibit 2, second page, is 17 that -- it says "MOAB Oil, Inc.," on top. Is this MOAB 18 Oil's letterhead? I just want to find out if that's 19 MOAB Oil's letterhead. 20 A. Oh, I'm sorry. Yes. 21 Q. Is this a form that you always use for these 22 transactions? 23 A. Yes. 24 Q. Let me ask you this. In the -- initially 25 there was an -- you said there was an agreement on</p>	<p>1 A. Yes. 2 Q. Okay. Is this the confirmation that was sent 3 after agreement was reached on the letter of credit as 4 opposed to the 30 days? 5 A. Yes. 6 Q. Sir, does either Exhibit 2 or Exhibit 3 7 refer -- actually on the -- on the delivery side, both 8 of these refer to the August 8th declaration of 9 discharge port. Correct, sir? 10 A. Yes. 11 Q. Is Exhibit 3 also on MOAB's letterhead? 12 A. Yes. 13 Q. With regard to both Exhibit 2 and Exhibit 3, 14 sir, did you draft them? 15 A. Yes. 16 Q. Did you draft them on behalf of both parties, 17 Vinmar and Tricon? 18 A. Yes. 19 Q. And did you draft them to represent the terms 20 of the deal that you had negotiated for them? 21 A. Yes. 22 Q. At the bottom of both Exhibit 2 and Exhibit 3, 23 there is a statement that says, "If there is anything 24 outlined contrary to your understanding of our 25 agreement, please notify us immediately." Do you see</p>
255	257
<p>1 30-day term, which was later changed, and then there was 2 discussion about discharge port as well? 3 A. Yes. 4 Q. And was it your testimony that both of these 5 discussions occurred after you believed that there was a 6 deal made, that a firm bid had been made and a firm 7 offer had been made? 8 A. Yes. 9 Q. In the industry, can deals be made although 10 there may be some terms that are left to be negotiated 11 between the parties? 12 A. Yes, sometimes. 13 Q. I'm showing you now what's Exhibit 3. Do you 14 recognize that document, Mr. Leyman? 15 A. Yes. 16 Q. Is this also a confirmation? 17 A. Yes. 18 Q. And did you send this confirmation to both 19 Rick Wilson and Brad Lockwood? 20 A. Yes. 21 Q. Okay. And is it also on MOAB's letterhead? 22 A. Yes. 23 Q. And if you would look sort of a third of the 24 way down where it says "Amended payment terms." Do you 25 see that, sir?</p>	<p>1 that, sir? 2 A. Yes. 3 Q. That's in both Exhibit 2 and Exhibit 3? 4 A. Yes. 5 Q. Is that always in the confirmation memos that 6 you send? 7 A. Yes. 8 Q. And why do you include that? 9 A. Well, everyone is human. And on a rare case 10 where there is a misunderstanding or miscommunication, 11 it gives everyone the opportunity to see if there's any 12 mistakes and to correct them immediately. 13 Q. Okay. And would it be your expectation that 14 if you made a mistake one of the parties would call it 15 to your attention? 16 A. Yes. Or I would notice the mistake as well. 17 Q. And, in fact, someone did call you to point 18 out a mistake on Exhibit 2 and Exhibit 3. Isn't that 19 so? 20 A. Yes. 21 Q. And what was that mistake? 22 A. It was the price. 23 Q. Who pointed out a mistake on the price to you? 24 A. Brad Lockwood advised me of the price 25 difference.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

258	260
<p>1 Q. Did Mr. Wilson also advise you that there was 2 a mistake on the price? 3 A. No. 4 Q. If you would turn back to Exhibit 1, the IM's, 5 sir. And look at Page MOAB 9. 6 A. Yes. 7 Q. If you would look just a little bit below the 8 middle of the page at 10:41:09 a.m., a message from 9 Brad, where it says, "Please correct that Vinmar thing." 10 A. Yes. 11 Q. And right afterwards you reply, "Was sent out 12 this a.m."? 13 A. Yes. 14 Q. Is he referring to the mistake on the price? 15 A. Yes. 16 Q. And what you're saying was sent out this a.m. 17 is the correction? 18 A. Yes. 19 Q. Okay. Mr. Leyman, after getting our papers 20 straight, let me now hand you what is the real 21 Exhibit 4. And is that the confirmation that reflects 22 the corrected price? 23 A. Yes. 24 Q. And about a third of the way down on Exhibit 4 25 you see the legend Amended Price?</p>	<p>1 And look again at MOAB 9, near the bottom of the page of 2 MOAB 9. Do you see at 1:39:30 p.m. where it 3 says "Ed" -- and that would be you. Correct? 4 A. Yes. 5 Q. It says, "Yep. Would you have any interest in 6 buying back the 5 KT MX you sold to Vinmar?" 7 A. Yes. 8 Q. Tell me what that's about. 9 A. That's just being a broker. Sometimes on a 10 Monday someone would sell. On Tuesday they would buy 11 back. I was just inquiring there if Tricon was still on 12 a sale side or possibly buying. 13 Q. Did Mr. Wilson or anybody at Vinmar contact 14 you to tell you that you might be -- that they might be 15 interested in selling the MX they had just bought? 16 A. I don't have any recollection of Mr. Wilson 17 asking me to try to sell -- resell his cargo. In fact, 18 I don't recall speaking to Mr. Wilson that day, but I 19 assume that I did because being a broker -- he had been 20 the buyer on Monday. I would see if he would be a 21 potential buyer on Tuesday. But I don't have any 22 recollection of actually speaking to him. 23 Q. Okay. And, Mr. Leyman, is Exhibit 4 the last 24 confirmatory memoranda that you sent to the parties on 25 this deal?</p>
259	261
<p>1 A. Yes. 2 Q. And this is the correct price that was agreed 3 to between the parties? 4 A. Yes. 5 Q. And, again, is Exhibit 4 on MOAB letterhead? 6 A. Yes. 7 Q. And was Exhibit 4 drafted by you? 8 A. Yes. 9 Q. Was it drafted by you on behalf of both 10 parties? 11 A. Yes. 12 Q. And was it drafted to reflect the terms of 13 their agreement? 14 A. Yes. 15 Q. The agreement that the parties authorized to 16 communicate to each other? 17 A. Yes. 18 Q. Now, Mr. Leyman, do Exhibits 2, 3 or 4 say 19 anything about whether the product needed to have -- 20 needed to be made of U.S. origin? 21 A. No. 22 Q. Why do not they -- why do they not say 23 anything about that? 24 A. Because it was not discussed in negotiations. 25 Q. If you will turn back to Exhibit 1, the IM's,</p>	<p>1 A. Yes. 2 Q. And you sent it to both Vinmar and Tricon? 3 A. Yes. 4 Q. If you would now go to Page MOAB 12 in 5 Exhibit 1. On the top of that page is the date 7-31-08. 6 Do you see that, sir? 7 A. Yes. 8 Q. Are these instant messages between you and 9 Mr. Lockwood on July 31st? 10 A. Yes. 11 Q. A little over a week after the transaction? 12 A. Yes. 13 Q. If you would look at about the middle of the 14 page where it says 10:19:09 a.m.? 15 A. Yes. 16 Q. It says, "Ed." That is you. It 17 says, "Vinmar's MX still available but has no interest 18 in selling anywhere close to your price ideas." 19 A. Yes. 20 Q. Do you see that, sir? 21 A. Yeah. 22 Q. What are you referring to when you say that? 23 A. After these earlier messages, I called Rick 24 Wilson, asked him if the cargo that he bought from 25 Tricon was still available. He said it was. I told him</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">262</p> <p>1 that Tricon is indicating interest in buying xylenes. 2 I gave him the indicated price. He 3 indicated that he would look to resell the barrels but 4 at a profit, and indicated 1350 as the sales price. 5 Q. Okay. And that is -- when you say -- in the 6 next line where you say, "Ed, at 1300 plus he would 7 consider"? 8 A. Yes. 9 Q. "He" being Mr. Wilson? 10 A. Yes. 11 Q. And these are communications you are having 12 with Mr. Lockwood? 13 A. Yes. 14 Q. These were telephone conversations that you 15 had with Mr. Wilson about whether they would sell the MX 16 they had just bought? 17 A. Yes. 18 Q. And Mr. Wilson communicated to you that he 19 would at that price where they would make a profit? 20 A. Yes. 21 Q. Would Mr. Wilson be able to sell mixed xylene 22 if he had not bought it? 23 A. Theoretically you can sell, sure. That was 24 not the purpose of the call, though. 25 Q. Okay. Well, what was the purpose of the call?</p>	<p style="text-align: right;">264</p> <p>1 Exhibit 1 then, which is the MOAB document. And take a 2 look at Page MOAB 14, which is the last page in the 3 exhibit. 4 A. Okay. 5 Q. Okay. And if you would flip back a couple of 6 pages, this appears to still be the IM's between you and 7 Mr. Lockwood -- 8 A. Right. 9 Q. -- on July 31st? 10 A. Yes. 11 Q. That's correct? 12 A. Yes. 13 Q. And at the top of MOAB 14 at 4:45:59 p.m., is 14 that a message from you that says, "Ed, got a call from 15 Vinmar"? 16 A. Uh-huh. 17 Q. Is this the call that you were talking about a 18 moment ago that Mr. Wilson gave you about the U.S. 19 origin? 20 A. Yes. 21 Q. Okay. And was this when you let Mr. Lockwood 22 know that you had received that call? 23 A. Yes. 24 Q. Had you received that call close in time to 25 4:45:59 p.m. on July 31st?</p>
<p style="text-align: right;">263</p> <p>1 A. To see if he specifically wanted to resell the 2 barrels he bought from Tricon. 3 Q. And his response was? 4 A. He indicated that he would sell the barrels if 5 he could obtain a price of 1350. 6 Q. And he -- and he couldn't sell those barrels 7 unless he had bought them. Would that be right? 8 A. Again, just a point of clarification. One -- 9 in commodity trading, one can sell a product that they 10 don't necessarily own. 11 Q. Mr. Leyman, when did you first hear that 12 Vinmar was saying that the mixed xylene had to be of 13 U.S. origin? 14 A. On the afternoon of the 31st of July. 15 Q. Okay. And how did you hear that? 16 A. Mr. Wilson sent me an instant message asking 17 me to call him. I called him. And he told me that the 18 xylenes he purchased from Tricon needed to be of U.S. 19 origin. 20 Q. Okay. And what was your response to him? 21 A. I told him that that was not what was 22 negotiated, that it was not discussed, and the sale was 23 based on a delivered CFR first half September basis with 24 no origin guarantee. 25 Q. Okay. Well, look then -- let's go back to</p>	<p style="text-align: right;">265</p> <p>1 A. There were one or two calls that afternoon. 2 They would probably be close to that time. 3 Q. On 4:46:42 p.m., you say, "Ed, want any 4 discussions to go through MOAB since we brokered the 5 deal?" Do you see that, sir? 6 A. Yes. 7 Q. Tell me what that was about. 8 A. Vinmar requested that any discussions 9 regarding the U.S. origin be done through MOAB, that 10 they preferred speaking through MOAB than speaking 11 directly to Tricon. 12 Q. So they wanted to do it just the way the deal 13 had originally been put together? 14 A. Yes. 15 Q. Where you would be an agent for both sides? 16 A. Yes. 17 Q. About halfway down the page, 18 4:50:34 p.m., "Ed, I repeated that that was not 19 negotiated and a guarantee of U.S. origin only was not 20 agreed upon." Do you see that, sir? 21 A. Yes. 22 Q. You're telling Mr. Lockwood what you had told 23 Mr. Wilson over the telephone. Is that right? 24 A. That is correct. 25 Q. And that's at 4:50, just a few minutes after</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">266</p> <p>1 the IM's at the top of the page. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. So the best of your recollection is that these</p> <p>4 IM's are occurring a short time after your conversation</p> <p>5 with Mr. Wilson --</p> <p>6 A. Yes.</p> <p>7 Q. -- over the telephone?</p> <p>8 A. Yes.</p> <p>9 Q. Mr. Leyman, do you still broker deals with</p> <p>10 Vinmar today?</p> <p>11 A. Yeah. I haven't done anything recently, but I</p> <p>12 still deal with Vinmar.</p> <p>13 Q. Did you broker deals with Vinmar after the</p> <p>14 July 22, 2008, deal with Tricon?</p> <p>15 A. No.</p> <p>16 Q. Do you still deal with them to see if there</p> <p>17 are deals to be made?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have any problem with working with</p> <p>20 Vinmar?</p> <p>21 A. No.</p> <p>22 EXAMINATION</p> <p>23 BY MR. LEE:</p> <p>24 Q. Okay. Mr. Leyman, it's my turn to ask you</p> <p>25 some questions. I introduced myself a little bit</p>	<p style="text-align: right;">268</p> <p>1 Q. You tell Mr. Lockwood, "See possible 5 KT FOB</p> <p>2 H/TC any August. MX buyer indicated paying 4 to 402</p> <p>3 range." Right?</p> <p>4 A. Yes.</p> <p>5 Q. Now, was that a reference to your conversation</p> <p>6 with Mr. Wilson that he may be willing to buy 5 KT of MX</p> <p>7 FOB H/TC?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. "H" being Houston?</p> <p>10 A. Yes.</p> <p>11 Q. And "TC" being Texas City?</p> <p>12 A. Yes.</p> <p>13 Q. First of all, at 9:29:04 a.m., Mr. Lockwood</p> <p>14 says he would offer 5 KT FOB Houston, Texas City,</p> <p>15 Corpus, any August at \$4.10 a gallon. P and C basis not</p> <p>16 reported.</p> <p>17 A. Yes.</p> <p>18 Q. Now, is that a -- is that a firm offer?</p> <p>19 A. Yes.</p> <p>20 Q. All right. Where did the -- you mentioned to</p> <p>21 Mr. Wilson in his -- in your instant message to him at</p> <p>22 9:34 that the quality would be 52 -- that's 5211/20 BR,</p> <p>23 which I take it is -- 5211 would be the reference to the</p> <p>24 ASTM --</p> <p>25 A. Yes.</p>
<p style="text-align: right;">267</p> <p>1 earlier. My name is Stephen Lee. I represent Vinmar.</p> <p>2 You and I have never met. Correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Do you recognize Exhibit 6?</p> <p>5 A. Yes.</p> <p>6 Q. What is it, sir?</p> <p>7 A. It's IM messages between myself and Rick</p> <p>8 Wilson.</p> <p>9 Q. Okay. And the first page of Exhibit 6 are IM</p> <p>10 messages between you and Mr. Wilson on July 22, 2008.</p> <p>11 Correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then the second page would be instant</p> <p>14 message exchanges between you and Mr. Wilson on July 31,</p> <p>15 2008?</p> <p>16 A. Yes.</p> <p>17 Q. As I read these instant messages -- and it</p> <p>18 starts with you talking to Mr. Wilson around 9:19 in the</p> <p>19 morning on July the 22nd where Rick is asking you if</p> <p>20 there's any MX available. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And then if you pick up on Exhibit 1, which is</p> <p>23 your instant message exchanges with Mr. Lockwood</p> <p>24 starting at 9:25. Do you see that? Right here, sir.</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">269</p> <p>1 Q. -- standard?</p> <p>2 And then 20 would be a maximum of 20</p> <p>3 bromine?</p> <p>4 A. Bromine index.</p> <p>5 Q. Bromine index. Okay. Is that an indication</p> <p>6 of max 20?</p> <p>7 A. Yes.</p> <p>8 Q. Where did that quality reference come from?</p> <p>9 A. How best to answer that? That was Vinmar's</p> <p>10 requirement for the quality and that's one of the</p> <p>11 standard qualities of mixed xylenes in the Gulf Coast.</p> <p>12 Q. And so you made -- you made the firm offer to</p> <p>13 Vinmar at 9:34 on July the 22nd. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. And that would be for FOB. Explain what FOB</p> <p>16 Houston, Texas City, Corpus means.</p> <p>17 A. Houston, Texas City, Corpus would be the</p> <p>18 possible load ports of the product, Houston, Texas City,</p> <p>19 or Corpus Christi, Texas. FOB I guess -- I'm not</p> <p>20 totally aware of what the Incoterms mean, but I think</p> <p>21 it's free on board or something similar to that.</p> <p>22 Q. In other words, the product would be delivered</p> <p>23 to Vinmar or to the buyer at one of those locations and</p> <p>24 the buyer would be responsible for freight? Is that</p> <p>25 your understanding?</p>

68 (Pages 266 to 269)

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">270</p> <p>1 A. Yes. The buyer would be responsible for --</p> <p>2 if -- yeah, to load a vessel.</p> <p>3 Q. Okay. And Mr. Wilson doesn't respond with a</p> <p>4 "Yes" or "No." Correct?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. All right. He says he's on the phone. He's</p> <p>7 talking with his salesperson. And at 9:57 you tell</p> <p>8 Mr. Wilson that energy is moving lower; the seller is</p> <p>9 asking for a counterbid. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. The seller in this instance would be Tricon?</p> <p>12 A. Yes.</p> <p>13 Q. At 10:00 o'clock you tell Mr. Wilson that</p> <p>14 there's a second MX seller asking if buyer would</p> <p>15 purchase CFR main Asian ports, arrival basis loading</p> <p>16 USGC first half of August?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know who that second MX seller was that</p> <p>19 you were referring to?</p> <p>20 A. That was also Tricon.</p> <p>21 Q. And where did you get that information? From</p> <p>22 Mr. Lockwood?</p> <p>23 A. Yes.</p> <p>24 Q. Loading USGC, is that a reference to the U.S.</p> <p>25 Gulf Coast?</p>	<p style="text-align: right;">272</p> <p>1 A. Yes.</p> <p>2 Q. All right. Now we're talking about selling</p> <p>3 5 metric tons on a FCC basis. At least that's what you</p> <p>4 reported to Mr. Wilson at 10:00 o'clock, that there was</p> <p>5 somebody that was interested in that. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. At the 10:00 o'clock instant message to</p> <p>8 Mr. Wilson, is that what you would call an indication of</p> <p>9 an offer or is it actually a firm offer at that point?</p> <p>10 A. The --</p> <p>11 Q. Where you say, "Second MX seller asking if</p> <p>12 buyer would purchase"?</p> <p>13 A. That's an indication.</p> <p>14 Q. All right. And then you ask Mr. Wilson at</p> <p>15 10:05 whether he has any bid. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Are you asking him if he wants to bid against</p> <p>18 this indication -- or make a bid against the indication</p> <p>19 for the CFR delivery?</p> <p>20 A. Yes. Prior to that, I spoke to Rick by</p> <p>21 telephone and he did not have any interest any longer in</p> <p>22 buying FOB the Gulf Coast. His preference was to buy</p> <p>23 something on a delivered CFR basis to either Korea or</p> <p>24 Taiwan. He indicated that he had two possible buyers</p> <p>25 and he would prefer seeing offers on a delivered basis.</p>
<p style="text-align: right;">271</p> <p>1 A. Yes.</p> <p>2 Q. All right. And the CFR, that's a different</p> <p>3 freight term than the FOB. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. CFR -- is it your understanding that CFR means</p> <p>6 that the seller is responsible to ship the product even</p> <p>7 though the buyer is still paying for shipping?</p> <p>8 A. Yes.</p> <p>9 Q. First of all, this back and forth that we see</p> <p>10 on Exhibit 1 and Exhibit 6, is this fairly typical of</p> <p>11 how your day might go when you're working a deal?</p> <p>12 A. Yes.</p> <p>13 Q. All right. And there may be various offers</p> <p>14 and various bids that may take -- it may take days, it</p> <p>15 may take hours, it may take minutes to bring two parties</p> <p>16 together?</p> <p>17 A. Yes.</p> <p>18 Q. And sometimes you're successful and sometimes</p> <p>19 you're not. Right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And when I'm -- sir, if I'm looking</p> <p>22 back then I guess at Exhibit 1, which is Mr. Lockwood's</p> <p>23 exchanges with you, and we see that -- we first started</p> <p>24 off talking about 5 KT FOB and now we're talking about</p> <p>25 selling 5 -- KT is metric tons. Correct?</p>	<p style="text-align: right;">273</p> <p>1 Q. Okay.</p> <p>2 A. I spoke to Tricon and he said he would be able</p> <p>3 to sell or offer on a CFR basis.</p> <p>4 Q. All right. And did Tricon -- is this</p> <p>5 Mr. Lockwood? He also told you that it would be loading</p> <p>6 out of the U.S. Gulf Coast, at least what you reported</p> <p>7 to mister -- correct?</p> <p>8 A. That was his indication, that he can load</p> <p>9 barrels first half August out of the Gulf Coast and sell</p> <p>10 it on a delivery basis to Asia. That was not acceptable</p> <p>11 to Wilson. He indicated the timing was very important,</p> <p>12 that he needed a guarantee arrival of September 15.</p> <p>13 Q. All right.</p> <p>14 A. So that offer was not pursued on that basis.</p> <p>15 Q. And then if we go all the way down to 10:38</p> <p>16 where you see Mr. Lockwood saying, "Show Vinmar" --</p> <p>17 A. Yes.</p> <p>18 Q. -- "I can sell" --</p> <p>19 A. Yes.</p> <p>20 Q. -- "1360 a metric ton."</p> <p>21 And he goes on to report a very -- a</p> <p>22 number of different aspects of an offer. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. Is that a firm offer?</p> <p>25 A. Yes.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">274</p> <p>1 Q. All right. What Mr. Lockwood was offering was</p> <p>2 a product quality that met the ASTM D843?</p> <p>3 A. That's correct.</p> <p>4 Q. All right. And you've already told us this</p> <p>5 morning that Vinmar was not interested in that</p> <p>6 particular quality. Correct?</p> <p>7 A. That's correct.</p> <p>8 Q. They wanted the ASTM 5211?</p> <p>9 A. Yes.</p> <p>10 Q. All right. At -- so then as I look at this,</p> <p>11 Mr. Leyman, there's a couple of different exchanges</p> <p>12 between you and Mr. Lockwood, but I don't see anything</p> <p>13 else really until 12:09:39, where you say, "All done but</p> <p>14 call me."</p> <p>15 A. Yes.</p> <p>16 Q. And there's nothing between you and Mr. Wilson</p> <p>17 after 10:00 o'clock before 12:49. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Were you talking to Mr. Wilson by</p> <p>20 telephone?</p> <p>21 A. Yes.</p> <p>22 Q. Were you talking to Mr. Lockwood by phone as</p> <p>23 well?</p> <p>24 A. Yes.</p> <p>25 Q. Does MOAB record phone conversations?</p>	<p style="text-align: right;">276</p> <p>1 Q. All right. Mr. Leyman, I've handed you what's</p> <p>2 been marked as Exhibit 7. Could you tell us what that</p> <p>3 is, please, sir?</p> <p>4 A. That's the confirmation I sent out to both</p> <p>5 parties concerning this transaction.</p> <p>6 Q. Okay. This looks to me like it's the -- it's</p> <p>7 your internal worksheet.</p> <p>8 A. Yes, it is.</p> <p>9 Q. All right. This document, Exhibit 7, wasn't</p> <p>10 actually sent to the parties. Correct?</p> <p>11 A. That's correct. It's a draft that I sent to</p> <p>12 someone who's responsible for sending out the</p> <p>13 confirmations.</p> <p>14 Q. Okay. So -- and I -- that was -- you</p> <p>15 anticipated one of the questions I had for you. You</p> <p>16 were asked earlier if you actually prepared the</p> <p>17 typewritten confirmations that were sent to the parties.</p> <p>18 And is it your practice to prepare this</p> <p>19 handwritten sheet and then give it to someone else who</p> <p>20 would actually input the information --</p> <p>21 A. Yes.</p> <p>22 Q. -- to be sent?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Do you know when Exhibit 7 was</p> <p>25 prepared?</p>
<p style="text-align: right;">275</p> <p>1 A. They do, but the system apparently doesn't</p> <p>2 allow -- or doesn't work. I know John told me there was</p> <p>3 a request --</p> <p>4 Q. Okay. Don't --</p> <p>5 A. -- and there was a possible --</p> <p>6 Q. Don't tell me what counsel said. I guess the</p> <p>7 question is, have you looked for or has somebody at MOAB</p> <p>8 looked to determine --</p> <p>9 A. Yes.</p> <p>10 Q. -- whether there are any phone recordings?</p> <p>11 A. My understanding, they did.</p> <p>12 Q. All right. And you haven't been able to find</p> <p>13 any?</p> <p>14 A. That's correct.</p> <p>15 MR. CANNAVINO: On the record. We were</p> <p>16 requested to check for phone records. We had the IT</p> <p>17 people do that, And anything that may have existed was</p> <p>18 overridden so there was nothing. But we did check that</p> <p>19 as part of our response to the subpoena.</p> <p>20 Q. (BY MR. LEE) So the -- just to be clear then,</p> <p>21 the deal that you negotiated was done over the phone?</p> <p>22 A. Yes.</p> <p>23 Q. In separate conversations with Mr. Wilson on</p> <p>24 one hand and Mr. Lockwood on the other?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">277</p> <p>1 A. Sometime in the afternoon of the 22nd.</p> <p>2 Q. Where did you get the price of 1110 a metric</p> <p>3 ton?</p> <p>4 A. Well, 1110 is incorrect. What was agreed to</p> <p>5 after the negotiation was 1310. That is a typo.</p> <p>6 Q. And I'm just curious if you recall where</p> <p>7 that -- where you came up with that number.</p> <p>8 A. It was something that just was a mistake that</p> <p>9 was put down on the paper. No idea where it came from.</p> <p>10 Q. All right. It's your understanding that all</p> <p>11 of the terms that are listed on Exhibit 4 on your</p> <p>12 confirmation were agreed terms?</p> <p>13 A. Yes.</p> <p>14 Q. There's no arbitration provision in that</p> <p>15 clause -- in that confirmation. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. Did you ever discuss with Mr. Wilson</p> <p>18 arbitration?</p> <p>19 A. No.</p> <p>20 Q. Did you discuss with Mr. Lockwood arbitration?</p> <p>21 A. No.</p> <p>22 Q. Well, what did Mr. Wilson tell you on July</p> <p>23 the 31st when he said he had a problem with the deal?</p> <p>24 A. He said that he needed a guarantee of U.S.</p> <p>25 origin on the xylenes.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">278</p> <p>1 Q. Now, when you -- when you broker a deal, 2 Mr. Leyman, do the offer and the bid -- in order for 3 them to have a deal between the parties, the offer and 4 the bid need to match. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And if -- I'm going to ask you to make 7 an assumption with me for a minute, Mr. Leyman. If 8 Mr. Wilson -- if the evidence shows that Mr. Wilson 9 believed he was purchasing a guaranteed MX U.S. origin 10 but Tricon wasn't willing to sell that, you don't have a 11 deal, do you?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. Because you've got to match a bid with 14 an offer on those terms. Correct?</p> <p>15 A. Well, the terms must stay the same.</p> <p>16 Q. Okay. Let me ask you to turn to the second 17 page of this -- of Exhibit 8. At the very -- near the 18 top, Mr. Leyman, there's a reference at 2:55:25 p.m. 19 from you.</p> <p>20 It says, "Again, is it possible for you to 21 substitute a U.S. origin cargo in order to avoid a legal 22 hassle?" Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall asking Mr. Lockwood that 25 question?</p>	<p style="text-align: right;">280</p> <p>1 Q. That was Mr. Lockwood's position. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. If you'll go to the next page of 4 Exhibit 8.</p> <p>5 A. Okay.</p> <p>6 Q. At about 5:51:31 p.m., there's a message from 7 Mr. Lockwood. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. No. He was. Right? I mean, he asked you, 10 "How did we go from that quality, being the D843, to 11 5211"?</p> <p>12 A. The only thing I ever discussed -- there was a 13 buying interest by Vinmar, but it was only for 5211 14 spec.</p> <p>15 Q. Right. And that's what you told him. I 16 guess -- I'm just asking you -- I mean, certainly he 17 asked the question, correct, how did we go from that 18 quality, being a reference to the D43, to 5211? 19 Correct?</p> <p>20 A. Yeah.</p> <p>21 Q. And you told him the negotiations were for 22 only 5211/20 bromine?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And Mr. Lockwood even asked you a 25 couple of lines down, "Basically he bid on 5211 only</p>
<p style="text-align: right;">279</p> <p>1 A. Yes.</p> <p>2 Q. All right. And did he ever explain to you why 3 it was not possible for Tricon to substitute a U.S. 4 origin cargo?</p> <p>5 A. I don't know if it was specifically at this 6 time, but in the period between July 31st and August 6th 7 Mr. Lockwood proposed or came up with the ideas of 8 several things to try to keep the deal in place.</p> <p>9 One was a different quality xylene. One 10 was a U.S. origin cargo with a guarantee of arriving by 11 September 30th. Even though it had an ETA prior to the 12 15th, it was not a guaranteed delivery by the 15th. And 13 I guess this was another possibility that he was 14 throwing out to satisfy Vinmar's request for the cargo.</p> <p>15 Q. Okay. But did -- I guess my question, did he 16 ever -- did Mr. Lockwood ever explain to you why he 17 would not provide U.S. origin MX --</p> <p>18 A. Oh, no. I'm sorry.</p> <p>19 Q. -- for a guaranteed first half of September 20 delivery?</p> <p>21 A. No --</p> <p>22 Q. Okay.</p> <p>23 A. -- other than the fact that it was not 24 negotiated and that was not part of the original 25 agreement.</p>	<p style="text-align: right;">281</p> <p>1 basis, I guess," with a question mark?</p> <p>2 And you answered, "Yes. Never bid or 3 showed any interest for 843 spec"?</p> <p>4 A. That's correct.</p> <p>5 Q. Let me -- let me approach it this way. When 6 this issue arose between Vinmar and Tricon, is it your 7 recollection, Mr. Leyman, that Tri -- that Vinmar was 8 willing to proceed with the deal at the price, 1310 a 9 metric ton, so long as Tricon guaranteed U.S. origin MX 10 for first half delivery in September?</p> <p>11 A. Vinmar sent an e-mail proposing that they go 12 forward with the deal on the original negotiated terms 13 and conditions. In the e-mail, there was also -- which 14 I didn't understand -- the phraseology "contract 15 form," acceptable contract form, whatever that meant, 16 but that is what they proposed on August 6th.</p> <p>17 Q. Okay. I mean, I -- and so my question, 18 Mr. Leyman, was it your understanding in the days 19 following July 31st that Vinmar was still willing to 20 purchase MX at the 1310 a metric ton price if this U.S. 21 origin issue had been resolved?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Before we leave Exhibit 8, I just want 24 to ask you about -- on the last page. You had mentioned 25 you weren't clear as to the price, and I just wanted to</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">282</p> <p>1 ask you -- at the very top, you make the statement on 2 August the 6th, 2008, "The fact that Vinmar is still 3 willing to pay 1310 in a market that is much lower 4 suggests that they are just not walking or running away 5 from the deal." Do you see that? 6 A. Yes. 7 Q. Does that refresh your recollection that as of 8 August the 6th, 2008, the price of MX was less than the 9 price that was originally negotiated? 10 A. Yes. 11 Q. If somebody refers in an -- in an instant 12 message exchange to "USG," does that have a meaning to 13 you? 14 A. It means U.S. Gulf. 15 Q. Have you talked to Brad Lockwood about this 16 case? 17 A. No, not recently. 18 Q. Okay. When is the last time you talked to him 19 about this dispute between Tricon and Vinmar? 20 A. I don't have a specific date. But somewhere 21 since August 8th or maybe August 15th, he told me in 22 part of other conversations that the dispute was going 23 to arbitration and that was the extent of the 24 conversation. 25 Q. Have you talked to anybody at Tricon other</p>	<p style="text-align: right;">284</p> <p>1 the origin of the xylenes, and this was after I recapped 2 and summarized all the terms and conditions. 3 I subsequently called Brad, also recapped 4 the terms and conditions, and asked him that question. 5 And his response, "The origin was most likely U.S. 6 origin." 7 I in turn called back Rick, passed that 8 information on to him, and then we got into a discussion 9 of when to declare the discharge port. 10 Q. Let me ask you so we're -- I'm sorry. Back to 11 Exhibit 1, Mr. Leyman, if you could go to MOAB 12. And 12 this is July 31, 2008, at the top. You see that? 13 A. Yes. 14 Q. And this is an exchange -- at the very top an 15 exchange between you and Mr. Lockwood where it looks to 16 me like Mr. Lockwood is now in the market to buy MX. Is 17 that correct? 18 A. Yes. 19 Q. And, in fact, one of the things he asked you 20 is, "Could you go back to Vinmar and see if I could buy 21 some MX from them?" 22 A. Yes. 23 Q. All right. Did Mr. Lockwood tell you why he 24 was interested in buying MX on July 31, 2008? 25 A. No.</p>
<p style="text-align: right;">283</p> <p>1 than Mr. Lockwood about this dispute? 2 A. No. 3 Q. Exhibit 1 is the instant message exchanges 4 between you and Mr. Lockwood over the course of several 5 days. We've obviously looked at it already a few times 6 today, but I wanted to ask a couple of questions just 7 for my own understanding. 8 At Page 3, which is MOAB 6, midway down at 9 12:21:51, do you see that? 10 A. Yes. 11 Q. You write to Mr. Lockwood, "He is concerned if 12 MX on water and near Panama" -- it should be canal. 13 "We will not have enough time to declare discharge 14 port. He has more than potential customer." Do you 15 see that? 16 A. Yes. 17 Q. Are you referring to Mr. Wilson and Vinmar in 18 that instant message exchange? 19 A. Yes. 20 Q. All right. And what was the concern? That it 21 would be hard to get it through the Panama Canal in 22 time? 23 A. No. That was part of the discussion in 24 declaring the date of the discharge port. After we 25 concluded the transaction, Mr. Wilson asked me what --</p>	<p style="text-align: right;">285</p> <p>1 EXAMINATION 2 BY MR. DIAZ-ARRASTIA: 3 Q. Mr. Leyman, I have just a few questions. You 4 had talked to Mr. Lee about Exhibits 2, 3 and 4 for a 5 little while and there were some terms from those 6 documents that I think you referred to as boilerplate. 7 Do you recall that -- 8 A. Yes. 9 Q. -- back and forth? 10 A. Yes. 11 Q. I think you had told me that you had brokered 12 a deal with Mr. Wilson and Mr. Lockwood before 13 July 22nd, 2008? 14 A. Yes. 15 Q. Had you -- in those deals, had you sent 16 confirming memos like the ones -- 17 A. I did. 18 Q. -- that are Exhibit 2, 3 and 4? 19 A. I did. 20 Q. Did those also contain the same boilerplate? 21 A. Yes. 22 Q. Mr. Lockwood and Mr. Wilson knew your 23 boilerplate? 24 A. I assume so. 25 Q. They had seen it before --</p>

72 (Pages 282 to 285)

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">286</p> <p>1 A. Yes.</p> <p>2 Q. -- from prior transactions?</p> <p>3 A. Yes.</p> <p>4 Q. During the back and forth of the negotiations</p> <p>5 on the July 22nd deal, was it important to Vinmar and</p> <p>6 Mr. Wilson that delivery be in Asia between</p> <p>7 September 1st and September 15th?</p> <p>8 A. Yes.</p> <p>9 Q. Did Mr. Wilson tell you that that was an</p> <p>10 important part of the deal for him?</p> <p>11 A. Yes. And he bid accordingly.</p> <p>12 Q. I think your testimony was in the course of</p> <p>13 discussions the FOB H/TC became no longer a major</p> <p>14 concern for Mr. Wilson. Is that right?</p> <p>15 A. He had no interest in buying on that basis.</p> <p>16 Q. All right. You testified that there was some</p> <p>17 discussion between you and Mr. Lockwood that the MX</p> <p>18 Tricon would sell was likely U.S. Gulf origin. Do you</p> <p>19 remember that?</p> <p>20 A. Yes.</p> <p>21 Q. And you conveyed that to Mr. Wilson?</p> <p>22 A. Yes, I did.</p> <p>23 Q. Did Mr. Wilson ever say that it was necessary</p> <p>24 to guarantee U.S. origin?</p> <p>25 A. No, he did not.</p>	<p style="text-align: right;">288</p> <p>1 affirmed?</p> <p>2 MR. DIAZ-ARRASTIA: He did it in his</p> <p>3 deposition.</p> <p>4 JUDGE BENTON: Mr. Rajevac, if you'll</p> <p>5 raise your right hand, please, sir.</p> <p>6 (At this time the witness was duly sworn</p> <p>7 by Judge Benton.)</p> <p>8 JUDGE BENTON: All right. You may be</p> <p>9 seated.</p> <p>10 Mr. Lee, you may proceed.</p> <p>11 JUDGE DAVIDSON: Mr. Diaz-Arrastia?</p> <p>12 JUDGE BENTON: I'm sorry. That is the</p> <p>13 third time and it won't happen again.</p> <p>14 MR. DIAZ-ARRASTIA: Okay.</p> <p>15 VUK RAJEVEC,</p> <p>16 having been first duly sworn, testified as follows:</p> <p>17 DIRECT EXAMINATION (4:26 p.m.)</p> <p>18 BY MR. DIAZ-ARRASTIA:</p> <p>19 Q. Mr. Rajevac, good afternoon. Could you state</p> <p>20 your full name for the record, please?</p> <p>21 A. First name, Vuk, V-U-K, last name, Rajevac,</p> <p>22 R-A-J-E-V-A-C.</p> <p>23 Q. Okay. Can you tell us a little bit about your</p> <p>24 background and education, sir?</p> <p>25 A. I hold a bachelor's degree, double major from</p>
<p style="text-align: right;">287</p> <p>1 Q. On August the 6th and thereafter when there</p> <p>2 were discussions between Tricon and Vinmar that you were</p> <p>3 copied on or listened in on and -- at that time did</p> <p>4 Mr. Lockwood ever tell you that he could not guarantee</p> <p>5 U.S. origin and also guarantee delivery in Asia between</p> <p>6 September 1st and September 15th?</p> <p>7 A. I don't recall him saying that. Only that</p> <p>8 that was not what the original agreement was.</p> <p>9 (This is the end of the playback of the</p> <p>10 edited version of the videotaped deposition of Richard</p> <p>11 Leyman that was originally taken on April 29, 2010.)</p> <p>12 (The time is 4:26 p.m.)</p> <p>13 JUDGE BENTON: Would that be the complete</p> <p>14 offer of both parties?</p> <p>15 MR. DIAZ-ARRASTIA: Yes.</p> <p>16 JUDGE BENTON: Call your next witness.</p> <p>17 MR. DIAZ-ARRASTIA: The next witness</p> <p>18 is Vuk Rajevac. He's waiting outside.</p> <p>19 JUDGE BENTON: Vuk Rajevac. Do you know</p> <p>20 if the traditional oath is going to be appropriate?</p> <p>21 MR. DIAZ-ARRASTIA: Excuse me?</p> <p>22 JUDGE BENTON: The traditional oath, will</p> <p>23 it be appropriate?</p> <p>24 JUDGE DAVIDSON: Does he need to be sworn,</p> <p>25 affirmed or does he have a problem with being sworn or</p>	<p style="text-align: right;">289</p> <p>1 Rice University, one in economics and one in psychology.</p> <p>2 Q. Okay. And you have an unusual name. Can you</p> <p>3 tell us a little bit about your name?</p> <p>4 A. I come from Serbia. I moved here in 1999.</p> <p>5 Played tennis for Rice on a scholarship and then got a</p> <p>6 job at Tricon right after I graduated in 2004.</p> <p>7 Q. Okay. And you are still employed by Tricon?</p> <p>8 A. That is correct.</p> <p>9 Q. What is your position at Tricon today?</p> <p>10 A. I am currently a trader.</p> <p>11 Q. Okay. And back in July 2008, what was your</p> <p>12 position?</p> <p>13 A. I was an operations specialist.</p> <p>14 Q. And did you work on the Vinmar transaction?</p> <p>15 A. I did.</p> <p>16 Q. Excuse me?</p> <p>17 A. I did.</p> <p>18 Q. Okay. Tell me what an operations specialist</p> <p>19 does.</p> <p>20 A. After the trader does the deal, the</p> <p>21 transaction moves over to us, gets to free up the trader</p> <p>22 to do more trades and worry about other stuff. So we</p> <p>23 become the face of the company and deal with the</p> <p>24 counterparties on both sides, purchase and sales side,</p> <p>25 to bring the transaction to an end basically.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">290</p> <p>1 Q. And does the operations specialist negotiate</p> <p>2 contract terms?</p> <p>3 A. We're allowed to, yes, negotiate the general</p> <p>4 terms and conditions, correct.</p> <p>5 Q. Are some of these contract terms that the ops</p> <p>6 specialists negotiate, are they important to whether</p> <p>7 Tricon can make or lose money on a deal?</p> <p>8 A. Oh, very much, yes, sir.</p> <p>9 Q. Tell me, sir, when you first became involved</p> <p>10 in the Vinmar transaction.</p> <p>11 A. When I found out that Brad had done a deal</p> <p>12 with Vinmar, sold, and that's -- I don't recall exactly</p> <p>13 the date and time but --</p> <p>14 Q. You have some notebooks on the table in front</p> <p>15 of you. There's a Joint Exhibit notebook, a Tricon</p> <p>16 Exhibit notebook and a Vinmar Exhibit notebook.</p> <p>17 A. Right.</p> <p>18 Q. Let me ask you to take out the Joint Exhibit</p> <p>19 notebook --</p> <p>20 A. Got it.</p> <p>21 Q. -- and turn to Exhibit J 5. And let's look at</p> <p>22 the second page of Exhibit J 5.</p> <p>23 A. Okay.</p> <p>24 Q. Is that Tricon's sales slip?</p> <p>25 A. Yes, that is.</p>	<p style="text-align: right;">292</p> <p>1 essential terms of the deal in Joint Exhibit 5, which</p> <p>2 was a Tricon letter, and Joint Exhibit 4, the last</p> <p>3 MOAB -- 4, the last MOAB confirm, are the essential</p> <p>4 terms the same in both?</p> <p>5 A. Yes. As far as I can tell, they are.</p> <p>6 Q. Is it your job as the operations specialist at</p> <p>7 Tricon to negotiate the terms and conditions of sale?</p> <p>8 A. Yes. That's part of -- part of my job, the</p> <p>9 general terms and conditions of the sale, yes.</p> <p>10 Q. Take a look at the last page of exhibit --</p> <p>11 Joint Exhibit No. 5. Do you see where there are</p> <p>12 signature lines on that page?</p> <p>13 A. I do.</p> <p>14 Q. Have you ever seen these lines signed on a</p> <p>15 spot deal?</p> <p>16 A. No. I can't recall ever seeing them signed on</p> <p>17 a spot deal, no. On a term deal -- on a longer term</p> <p>18 deal I have in the past but not on a spot deal.</p> <p>19 Q. Okay. Let me ask you also, Mr. Rajevac, when</p> <p>20 Vinmar sends its terms and conditions to its</p> <p>21 counterparty, is it its intention to cancel the deal</p> <p>22 that was made with the broker?</p> <p>23 MR. LEE: I think the question was did</p> <p>24 Vinmar. I think --</p> <p>25 MR. DIAZ-ARRASTIA: I'll ask the</p>
<p style="text-align: right;">291</p> <p>1 Q. Did you receive a copy of Exhibit J 5 from</p> <p>2 Mr. Lockwood?</p> <p>3 A. Yes, I did.</p> <p>4 Q. And if you will look at the second page of</p> <p>5 that sales letter, are those Tricon's standard terms and</p> <p>6 conditions of sale?</p> <p>7 A. Yes.</p> <p>8 Q. Let me tell you to take a look also at J 4.</p> <p>9 A. Joint 4?</p> <p>10 Q. Oh, I'm sorry. Second page. And that is a</p> <p>11 copy of the last MOAB confirm for this transaction.</p> <p>12 Mr. Rajevac, did you also receive a copy of Joint</p> <p>13 Exhibit No. 4?</p> <p>14 A. I don't specifically remember receiving it,</p> <p>15 but I'm pretty certain I would have because it's part of</p> <p>16 the file and it usually goes behind our letter in the --</p> <p>17 in the file folder.</p> <p>18 Q. Okay. And I will ask you if you can turn</p> <p>19 again to the first page of the letter, TRI 7. And if</p> <p>20 you would compare that --</p> <p>21 A. Oh, that's on --</p> <p>22 Q. Exhibit 5.</p> <p>23 A. Okay.</p> <p>24 Q. Compare that to the second page of Joint</p> <p>25 Exhibit 4, which is VIN 18. And tell me, sir, if the</p>	<p style="text-align: right;">293</p> <p>1 question --</p> <p>2 MR. LEE: I object, but I think you messed</p> <p>3 up.</p> <p>4 MR. DIAZ-ARRASTIA: Excuse me. I</p> <p>5 apologize.</p> <p>6 JUDGE BENTON: It's like calling him</p> <p>7 Mr. Lee.</p> <p>8 MR. DIAZ-ARRASTIA: Like calling me</p> <p>9 Mr. Lee. I apologize. Let me rephrase.</p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) Mr. Rajevac, when</p> <p>11 Tricon sends its terms and conditions of sale to its</p> <p>12 counterparty, is it its intention to cancel the deal</p> <p>13 that had been made with the broker?</p> <p>14 A. No.</p> <p>15 Q. What is the intention?</p> <p>16 A. The intention is to expand on the terms that</p> <p>17 are -- that have been agreed already between the trader</p> <p>18 and propose the new terms and conditions.</p> <p>19 Q. To propose additional terms?</p> <p>20 A. Right.</p> <p>21 Q. And does it sometimes happen that some of the</p> <p>22 additional terms are not agreed to?</p> <p>23 A. It happens, yes.</p> <p>24 Q. Does it sometimes happen that none of the</p> <p>25 original -- none of additional terms are agreed to?</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">294</p> <p>1 A. Very rarely. I can't recall where none of 2 them had been agreed to. 3 Q. But in any event, does that mean that there's 4 no deal? 5 A. No. The deal is still in place. 6 Q. Let's turn now to Joint Exhibit No. 13. I 7 will call your attention to the bottom half. It's an 8 e-mail from Laurentiu Pascu to you on July 29th, 2008. 9 Do you see that, sir? 10 A. I do. 11 Q. Do you know who Laurentiu Pascu is? 12 A. Yes. He is my counterparty at Vinmar. 13 Q. So he would have been ops specialist at 14 Vinmar? 15 A. Correct. 16 Q. And if we can focus in on that, what is 17 Mr. Pascu telling you in his cover e-mail? 18 A. "Find enclosed our comments on your sale 19 confirmation. We shall revert soon with our -- we 20 should soon -- revert soon with our purchase order for 21 your review. Please advise. Advising bank where the 22 LC" -- 23 Q. Okay. 24 A. -- "should be open." Do you want me to read 25 the whole thing?</p>	<p style="text-align: right;">296</p> <p>1 Mr. Pascu?</p> <p>2 A. Yes. 3 Q. Now, although he has changed that, 4 Mr. Rajevac, in your mind does ship period and arrival 5 at destination really mean the same thing? 6 A. Yes, in this case it does. It's just -- it's 7 just language of our system calls it ship period. 8 Q. Okay. Let's go down to where it says credit 9 terms. Do you see that, sir? 10 A. Yes. 11 Q. And that's referring to the on -- at site 12 letter of credit that was supposed to be prepared? 13 A. Correct. 14 Q. And do you see where Mr. Rajevac -- Mr. Pascu 15 scratched out the words "and confirmed"? 16 A. I do see that. 17 Q. Okay. Is -- whether the letter of credit 18 needs to be confirmed, is that a logistics issue? 19 A. That's a credit issue. 20 Q. And do operations specialists negotiate credit 21 issues? 22 A. Yes, amongst others. 23 Q. Okay. Let's turn to the next page. And let's 24 go down to Paragraph No. 7 first and I'll jump around 25 here a little bit.</p>
<p style="text-align: right;">295</p> <p>1 Q. No. I think that's enough. Now, let me ask 2 you something. As an operations specialist, do you 3 prepare a purchase order if you think your deal has just 4 been canceled? 5 A. No. 6 Q. Turn to the next page on Joint Exhibit 13. 7 Actually another couple of pages. Did you receive this 8 document attached to the e-mail that you just looked at? 9 A. Yes, I did. 10 Q. And it contains some changes on the letter 11 that was sent -- 12 A. Correct. 13 Q. -- by Mr. Lockwood. Correct? 14 A. Correct. 15 Q. Let's go over a couple of the changes. 16 A. Okay. 17 Q. Where it says "Ship Period," do you see that 18 ship has been scratched out and words have been written 19 in? 20 A. Right. 21 Q. Where it says, "Arrival at destination"? 22 A. Correct. 23 Q. Do you see that, sir? 24 A. Yes, I do. 25 Q. That was something that you received from</p>	<p style="text-align: right;">297</p> <p>1 A. No. 7? 2 Q. No. 7. 3 A. Okay. 4 Q. And first Transfer of Title and Risk. Do you 5 see that, sir? 6 A. I do. 7 Q. And Mr. Pascu has made a few changes. He has 8 scratched out a few words in the second line and added 9 "As per Incoterm 2000." 10 A. Yes. 11 Q. And under the A section under that, there's 12 also places where he has scratched out some language? 13 A. Yes. 14 Q. Do you see that, sir? 15 A. Yes, I do. 16 Q. Again, let me ask you, is transfer of title 17 and risk a logistics issue? 18 A. No, I wouldn't call it a logistics issue, no. 19 Q. Okay. Let's also look at some of the other 20 marks that Mr. Pascu has made. He -- first, No. 3, law 21 and jurisdiction. Do you see where there's a checkmark 22 there? 23 A. Yes, I do. 24 Q. Is law and jurisdiction a logistics issue? 25 A. No.</p>

75 (Pages 294 to 297)

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">298</p> <p>1 Q. It involves the law. Correct?</p> <p>2 A. Correct.</p> <p>3 Q. Is that the sort of provision that an ops</p> <p>4 specialist would negotiate?</p> <p>5 A. Absolutely.</p> <p>6 Q. Let's take a look at additional collateral,</p> <p>7 No. 4?</p> <p>8 A. Uh-huh.</p> <p>9 Q. There's also a checkmark there?</p> <p>10 A. Right.</p> <p>11 Q. Is additional collateral a logistics issue?</p> <p>12 A. No. That's another credit/finance issue.</p> <p>13 Q. Okay. And he does mention up in No. 2</p> <p>14 demurrage. He wants to change it from 90 days to</p> <p>15 60 days. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Let's also come to the next page and</p> <p>18 look at Paragraph No. 9.</p> <p>19 A. Okay.</p> <p>20 Q. That's the dispute resolution provision.</p> <p>21 Correct, sir?</p> <p>22 A. Yes.</p> <p>23 Q. And that's what provides for arbitration and</p> <p>24 that why we're here today?</p> <p>25 A. Right.</p>	<p style="text-align: right;">300</p> <p>1 number is found?</p> <p>2 A. 4529980?</p> <p>3 Q. Yes, sir.</p> <p>4 A. Yeah.</p> <p>5 Q. If you would now flip back to Joint Exhibit</p> <p>6 No. 13, the second page -- third page actually. Now, is</p> <p>7 that the same number that you see handwritten on top of</p> <p>8 Joint Exhibit 13?</p> <p>9 A. Yes, sir.</p> <p>10 JUDGE BENTON: Hold on a second. What</p> <p>11 exhibit number is that right there?</p> <p>12 MR. DIAZ-ARRASTIA: That is joint -- that</p> <p>13 would be Tricon Exhibit No. 10.</p> <p>14 JUDGE BENTON: Okay. All right.</p> <p>15 Q. (BY MR. DIAZ-ARRASTIA) If we could go down on</p> <p>16 Tricon Exhibit No. 10 to where it says law and</p> <p>17 arbitration. Tell me when you find it. There you go.</p> <p>18 And that is something that you have seen</p> <p>19 since this matter started being arbitrated, correct --</p> <p>20 A. Yes, since.</p> <p>21 Q. -- with Mr. Rajevac?</p> <p>22 A. This is correct.</p> <p>23 Q. It provides for arbitration before the</p> <p>24 Triple A pretty much like we're doing right now?</p> <p>25 A. That's what it says here.</p>
<p style="text-align: right;">299</p> <p>1 Q. Is dispute resolution one of the terms that an</p> <p>2 operations specialist would negotiate?</p> <p>3 A. Yeah, it is.</p> <p>4 Q. Now, Mr. Pascu, have you subsequently learned</p> <p>5 that the terms and conditions of Vinmar's standard</p> <p>6 purchase order also contain essentially the same</p> <p>7 arbitration clause?</p> <p>8 A. I have learned since, yes.</p> <p>9 Q. I am sorry. I keep calling you Pascu. I</p> <p>10 guess it's because Rajevac -- Pascu is easier to say</p> <p>11 than Rajevac.</p> <p>12 A. Right.</p> <p>13 Q. I apologize for that. But you have</p> <p>14 subsequently learned that, have you not, sir?</p> <p>15 A. Yes, I have. I have subsequently learned</p> <p>16 that.</p> <p>17 Q. Take a look at Tricon Exhibit folder, No. 10.</p> <p>18 A. No. 10?</p> <p>19 Q. No. 10. Do you see that, sir?</p> <p>20 A. I do.</p> <p>21 Q. And I will represent to you that that is the</p> <p>22 Vinmar purchase order for this transaction.</p> <p>23 A. Okay.</p> <p>24 Q. Will you take a look at -- on the upper</p> <p>25 right-hand corner, you see where the purchase order</p>	<p style="text-align: right;">301</p> <p>1 Q. Okay. And let me also just scroll up a little</p> <p>2 bit. There's a place in this purchase order for origin.</p> <p>3 Correct, sir?</p> <p>4 A. Yes, I do see that.</p> <p>5 Q. And it is left blank?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Let's take a look now at Joint Exhibit</p> <p>8 No. 14. And look at the lower half of this first page.</p> <p>9 Tell us which one Exhibit No. 14 is.</p> <p>10 A. It is my answer to Mr. Pascu's e-mail that we</p> <p>11 just looked at in one of the other exhibits where he was</p> <p>12 requesting some changes.</p> <p>13 Q. Okay. This is your response to Joint</p> <p>14 Exhibit 13. Correct?</p> <p>15 A. Yes, that's correct, 13.</p> <p>16 Q. And you sent it on July 29, 2008, at</p> <p>17 4:43 p.m.?</p> <p>18 A. Yep. That's what it says here.</p> <p>19 Q. And your statement on No. 1 is "Your comments</p> <p>20 on the contract are well noted and accepted except for</p> <p>21 demurrage time bar, which is 90 days as per industrywide</p> <p>22 standard." Is that correct, sir?</p> <p>23 A. Yes, that is correct.</p> <p>24 Q. Was it your intention to tell Mr. Pascu that</p> <p>25 you were in agreement with all of his proposed changes</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

<p style="text-align: right;">302</p> <p>1 except for demurrage time bar?</p> <p>2 A. Yes. That was my full intention.</p> <p>3 Q. And that's, in fact, what you said?</p> <p>4 A. Yes, exactly.</p> <p>5 Q. Okay. Now, later on down in No. 3, this is</p> <p>6 where you state -- specifically state to Mr. Pascu that</p> <p>7 Asian origin cargo might be used to supply this</p> <p>8 contract?</p> <p>9 A. Yes, that is correct.</p> <p>10 Q. Okay. And what it says is, "As far as the</p> <p>11 ship details, we sold on a CFR basis with arrival</p> <p>12 window. So once you declare the discharge port by</p> <p>13 August 8th, we will be able to decide whether to give</p> <p>14 you a deep sea cargo, which at that point will most</p> <p>15 likely be on the water, or an Asian origin cargo."</p> <p>16 And then at the very end, you say, "Since</p> <p>17 we guarantee the arrival window, we always have to keep</p> <p>18 a few options open in order to perform."</p> <p>19 A. That is correct.</p> <p>20 Q. Now, when you say "deep sea cargo," sir, what</p> <p>21 does that mean?</p> <p>22 A. It just means the cargo. In this case it's --</p> <p>23 Asia is the final destination. It means it's not coming</p> <p>24 from Asia. It will be coming from the U.S. or Europe</p> <p>25 or --</p>	<p style="text-align: right;">304</p> <p>1 Q. Do any of Mr. Pascu's comments on Joint</p> <p>2 Exhibit 13 say anything about origin of material?</p> <p>3 A. I'm uncertain. Let me look real quick. No.</p> <p>4 Q. When was the first time that you were told</p> <p>5 that Vinmar required U.S. origin material?</p> <p>6 A. I don't remember specifically. It was a</p> <p>7 couple of years ago but it was --</p> <p>8 Q. Well, let's look at the document. Let's look</p> <p>9 at Joint Exhibit No. 15.</p> <p>10 A. Joint --</p> <p>11 Q. If you will look at it in the book, sir.</p> <p>12 A. Joint 15.</p> <p>13 Q. Okay. Here we're looking at an e-mail that</p> <p>14 Mr. Wilson sends you on July 31st, 2008, at 1:43 p.m.</p> <p>15 A. Uh-huh. I see that.</p> <p>16 Q. Okay. And that's where he says, "Vuk, we</p> <p>17 cannot accept open origin for this material"?</p> <p>18 A. Yes.</p> <p>19 Q. Was that the first time you were told that</p> <p>20 Vinmar required U.S. origin?</p> <p>21 A. I'm pretty certain that was the first time,</p> <p>22 yes.</p> <p>23 Q. Okay. And how long after your communication</p> <p>24 with Mr. Pascu on Exhibit 14 did this come to you? Take</p> <p>25 a look at Exhibit 14.</p>
<p style="text-align: right;">303</p> <p>1 Q. When you refer to deep sea cargo, was that</p> <p>2 most likely to be U.S. origin cargo?</p> <p>3 A. Yes.</p> <p>4 Q. And actually what you tell Mr. Pascu is,</p> <p>5 "Unfortunately, with deep sea Asia trade, it is not</p> <p>6 always possible to know which cargo will be delivered</p> <p>7 since the ETA's are hard to keep due to Panama</p> <p>8 crossing," meaning the Panama Canal. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. "Weather in the Pacific, et cetera." And then</p> <p>11 you say, "And since we guarantee the arrival window, we</p> <p>12 always have to keep a few options open in order to</p> <p>13 perform." Correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Was it your understanding when you sent this</p> <p>16 e-mail on July 29th, 2008, at 4:43 p.m. that Tricon and</p> <p>17 Vinmar have now agreed on all the additional terms</p> <p>18 except for demurrage?</p> <p>19 MR. LEE: Objection. Leading.</p> <p>20 JUDGE BENTON: Overruled.</p> <p>21 A. Yes, it was my understanding.</p> <p>22 Q. (BY MR. DIAZ-ARRASTIA) Does the Tricon terms</p> <p>23 and conditions say anything about the origin of the</p> <p>24 material?</p> <p>25 A. No.</p>	<p style="text-align: right;">305</p> <p>1 A. Okay. Exhibit 14, I replied on July 29th.</p> <p>2 Q. At 4:43 p.m.?</p> <p>3 A. Right. And Mr. Wilson replied to me two days</p> <p>4 later on the 31st.</p> <p>5 Q. Okay. As an operations specialist,</p> <p>6 Mr. Rajevac, if you were informed by a counterparty that</p> <p>7 they were not necessarily going to meet something that</p> <p>8 was of critical importance to Tricon in the deal, when</p> <p>9 would you inform your trader?</p> <p>10 A. Can you repeat that?</p> <p>11 Q. As an operations specialist -- operations</p> <p>12 specialists work with the traders. Correct?</p> <p>13 A. Right.</p> <p>14 Q. Traders make the deals, the operations</p> <p>15 specialists complete the transaction. Correct?</p> <p>16 A. Right.</p> <p>17 Q. As an operations specialist, if you had just</p> <p>18 learned from your counterparty that something that your</p> <p>19 employer, Tricon, considered to be -- and this is a</p> <p>20 hypothetical question, something that Tricon considered</p> <p>21 to be a very important thing that they needed in the</p> <p>22 deal and the counterparty just told you that they would</p> <p>23 not necessarily meet that, how much time would it take</p> <p>24 you to report that to your trader?</p> <p>25 A. I would do it immediately.</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

306	308
<p>1 Q. Take a look now -- well, first of all, did 2 Tricon -- did Vinmar, I'm sorry, declare a discharge 3 port on August the 8th? 4 A. No, it did not. 5 Q. Okay. And what happened after that? 6 A. I believe I sent an e-mail telling them 7 they're in a breach of contract. 8 Q. Okay. Take a look at Joint Exhibit 21 towards 9 the end of that exhibit. It begins on Page VIN 41 at 10 the bottom. 11 A. Okay. 12 MR. DIAZ-ARRASTIA: Run up a little bit so 13 he can see the e-mail. There you go. 14 Q. (BY MR. DIAZ-ARRASTIA) And this is an e-mail 15 that you -- 16 MR. DIAZ-ARRASTIA: Oh, you lost it. 17 Q. (BY MR. DIAZ-ARRASTIA) -- you are sending to 18 Mr. Wilson on August the 8th at 3:42 p.m.? 19 A. Uh-huh. I see that. 20 Q. And it says, "Will you remind him that he has 21 to declare a discharge port that day?" 22 A. Yes. 23 Q. Okay. And let's take a look at the following 24 page at the very bottom. And you tell Mr. Wilson, 25 "Furthermore, if your discharge port declaration is not</p>	<p>1 MR. LEE: I don't think I have a terribly 2 long cross-examination but it may be a lot more 3 efficient if we do it that way. 4 JUDGE BENTON: All right. 5 MR. LEE: Besides, my back is killing me. 6 JUDGE BENTON: Very good. Just a little 7 note. Who you calling next after Mr. Rajevac? 8 MR. DIAZ-ARRASTIA: After Mr. Rajevac, we 9 will play the deposition of Mr. Pascu. 10 JUDGE BENTON: Okay. 11 MR. DIAZ-ARRASTIA: We will then play the 12 deposition of Mr. Wilson. Then we will call Mr. Steve 13 Simpson who is an expert on customs and practices in the 14 industry and then we will call Mr. Matthews to go over 15 the calculation of the damages. 16 JUDGE BENTON: Okay. 17 MR. DIAZ-ARRASTIA: And that will be our 18 evidence. 19 JUDGE BENTON: Let's -- 20 JUDGE DAVIDSON: Can we leave our stuff 21 here overnight or do we need to take it or do we need 22 to -- 23 MR. DIAZ-ARRASTIA: We have the room. I 24 intended to leave my binders and things here. 25 JUDGE DAVIDSON: Then I'll do the same.</p>
307	309
<p>1 given by 5:00 p.m. CST today, Vinmar will be in breach 2 of the contract and we reserve the right to resell the 3 cargo in open market and will hold Vinmar liable for all 4 damages, including but not limited to the difference 5 between the price at which we sold to Vinmar and the 6 price obtained for the cargo in the open market." 7 A. Right. 8 Q. And did Mr. Lockwood ask you to send this 9 notice? 10 A. I don't specifically remember if he did or 11 not, but I would assume we discussed it. 12 JUDGE BENTON: I would assume -- I'm 13 sorry. I would assume what? 14 THE WITNESS: That we discussed -- 15 JUDGE BENTON: Okay. 16 THE WITNESS: -- the fact that it was the 17 8th, almost 4:00 o'clock, and we haven't heard from 18 Vinmar. 19 MR. DIAZ-ARRASTIA: I pass the witness. 20 JUDGE BENTON: You want to go for about 21 five, ten minutes or do you want to just pick up in the 22 morning? What's your pleasure? 23 MR. LEE: It may be easier to pick up in 24 the morning. I can get my notes. 25 JUDGE BENTON: Okay.</p>	<p>1 JUDGE BENTON: Very good. We'll be in 2 recess until tomorrow morning. 3 We're off the record. 4 (Proceedings recessed at 4:50 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

ARBITRATION HEARING - SEPTEMBER 20, 2010

310

1 STATE OF TEXAS)
2 COUNTY OF HARRIS)
3

4 I, Diana Ramos, a Certified Shorthand Reporter
5 in and for the State of Texas, do hereby certify that
6 the above and foregoing pages contain a full, true and
7 correct transcription of my shorthand notes taken upon
8 the occasion set forth in the caption hereof, as reduced
9 to writing by me and under my supervision.

10 I further certify that the transcription of my
11 notes truly and correctly reflects the exhibits offered
12 into evidence, if any; that I am neither counsel for nor
13 related to any party in this cause and am not
14 financially interested in the outcome.

15 Certified to by me on this 28th day of
16 September, 2010.
17
18

19 _____
Diana Ramos CSR
Texas CSR No. 3133
20 Expiration Date: 12-31-2010
DEPOTEXAS
21 Firm Registration No. 95
13101 Northwest Freeway, Suite 210
22 Houston, Texas 77040
Tel: (281) 469-5580
23 FAX: (713) 460-2525
24
25